LAWS of BANKINg IN THE MIDDLE EAST

ARE; BAHRAIN; IRAQ; KUWAIT

OMAN; QATAR; UAE

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ARAB REPUBLIC OF EGYPT

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INTRODUCTION

This book has a target to supply the commercial, legal, economic and financial circles and centers around the world, basic knowledge about the provisions and rules applied upon the banking operations in some countries of the Middle East. from a legislative point of view. It does not search about the form, but it seeks the substantive rules emanating from the 'banking laws' in the Middle East. The book contains chapters on banking in the codes of commerce of the following countries stated alphabetically:

ARE. (Egypt) BAHRAIN.

IRAQ,KUWAIT

OMAN QATAR

UAE and

As to Saudi Arabia there is no substantive law enacted for the banking industry. Although it has some regulations and a judicial system for bank-customer differences known as "Committee of Settlement of Banking Disputes", established within SAMA (Saudi Arabian Monetary Agency) in Riyadh. This Committee issued since 1978 until this time hundreds of decisions for the settlement of debts.

As a general note there have been profound changes made in these laws; i.e., the laws of 'Central Depository' of shares and dividends of companies, and other bonds and securities converted into the electronic form.

The Author

THE ARAB REPUBLIC

OF EGYPT

THE EGYPTIAN CODE OF COMMERCE

The Egyptian code of commerce had been enacted and published in the Official Gazette on the 22nd of April 1999, containing 772 articles in five chapters:

Chapter one: The commercial acts, the merchant, the commercial register, the 'fond de commerce' (business concern), the capital market and the commercial obligations.

Chapter two: The commercial contracts: transfer of technology, commercial sale, the commercial agency, the commercial brokerage, the commercial transport and the general storage of goods.

Chapter Three: The operations of banks, and it will be our sole topic here, beginning with article 300 and ending by article 377. It contains: (1) cash deposit; (2) deposit of financial securities, (3) rental of safe deposit boxes; (4) mortgage of financial securities; (5) bank transfers; (6) simple credits; (7) documentary credits, (8) discount; *9) letters of guarantee and (10) current accounts.

The commercial papers or the negotiable instruments; and

Insolvency (bankruptcy) which is the last chapter,

THE AUTHOR

EGYPT

CODE OF COMMERCE

Law No.17 / 1999

Entered into force on the 22nd of Mai 1999

CHAPTER THREE

BANK DEPOSITS AND ACCOUNTS

ARTICLE 300

Without prejudice to the provisions of article 361/3 of this law, this chapter shall apply to all banking operations concluded between a bank and its customer, whether he may be merchant or not; and whatever may be the nature of these operations.

BANK CASH DEPOSITS

ARTICLE 301

Bank cash deposit is a contract by which the bank acquires the ownership of the money received and has the right to dispose thereof according to its profession subject to a commitment to return an identical sum in accordance with the contract.

ARTICLE 302

The bank shall open an account for each depositor, and shall inscribe in it all operations effected between the bank and the depositor or between the bank and a third party for the account of the depositor.

ARTICLE 303

Unless otherwise agreed upon, a deposit of money must be returned immediately upon demand. The depositor may at any time dispose of the balance or a part thereof. This right may be made conditional upon serving a prior notice or upon the expiry of a certain time limit.

In case of operations effected by the bank for the account of a depositor and resulting in a debit balance owed to the bank, the bank shall immediately advise the depositor to settle his position.

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ARTICLE 304

The bank shall send at least a statement of account every year to the depositor, unless an agreement or usage indicates that more than one statement is required. The statement shall contain a copy of the account at the time of dispatch, showing its balance carried forward.

Items inscribed in the statement may not be subject to a request for rectification if three consecutive years passed after the date of the statement without a notice to the bank that the depositor did not receive any statements during this period in accordance with the determinants of paragraph one of this article.

ARTICLE 305

The deposit shall be returned upon mere request, unless otherwise agreed and the depositor has the right to dispose of his credit balance or a part thereof unless this right is subject to a prior notice or a certain time limit.

If the depositor is deceased the deposit rests outstanding with the bank in favor of his successors unless they request to recover it before maturity.

ARTICLE 306

Such dealing with a bank shall be confined to the same branch where the account has been open unless it is otherwise agreed (1).

ARTICLE 307

Where the customer has several accounts in the same branch of the bank or in several branches, each such account shall be considered separate from the others(2) .

ARTICLE 308

A bank may open a joint account for two or more persons with equal shares, unless otherwise agreed.

The application to open a joint account shall be signed by all its parties and no withdrawal is allowed except with the approval of all of them, unless otherwise agreed upon.

Where one of the parties of a joint account notifies the bank that there is a dispute among them, the bank shall freeze the account until a settlement has been reached by agreement or by a court judgment.

Where an attachment is effected on one of the joint account parties, the attachment shall apply to the share of the seized party and the bank shall refrain from honoring any dealing upon the share of the attached party. The bank shall notify the other parties to the joint account of the attachment during a period of five days.

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[1] this rule is no longer in practice as almost all banks introduced electronic systems capable to effect the big volume of operations of all branches.

[2] Banks in Egypt has a different point of view: they consider that separate accounts may not permit to deal with debit balances in cases of loans or credit facilities. They prefer to put in the agreements a provision that all accounts are one and the same in order for them to transfer from one account to another. [Note of the Author].

Where a party to a joint account dies or becomes incapacitated, the other parties shall accordingly notify the bank with the event during ten days at the most from the date of death or incapacitation and that they wish to restrict dealing with the remaining parties. The bank shall prevent all withdrawals from the said account until the heirs are defined or the curator of the incapacitated is appointed.

ARTICLE 309

Where the bank issues a saving book, it shall register it in the name of the customer. Deposits and withdrawals shall be entered in the book and these inscription shall be duly signed by an officer and shall be a sufficient proof in the relationship between the bank and the person in whose favor the book was issued (3).

A saving book may be issued in favor of a minor. The minor and any other person may make deposits in this book; but the minor may not withdraw unless he satisfies the requirements of the law.

[3] Most Banks changed the saving books to be saving accounts. [Note of the Author]

2. FINANCIAL SECURITIES DEPOSITS

ARTICLE 310

The bank may not use the rights related to a financial seurity deposit for itself, unless agreed otherwise.

ARTICLE 311

In safekeeping the financial securities deposited with a bank, it shall exercise such care as is exercised by a remunerated depository and any agreement which exonerates the bank from such liability shall be null and void.

The bank may not release the possession of the securities except for a justifying reason.

ARTICLE 312

The bank shall collect the profits or revenues of the security; and its value if appropriate or became amortized; as well as any other amount related to the security unless otherwise agreed upon. Such proceeds shall be deposited in the customer's account.

The bank shall effect all operations necessary for the related rights of the security which are to be paid without consideration, such as replacement, stamping or adding new coupons thereto.

ARTICLE 313

The bank is required to inform the depositor with all matters related to his securities and depends on his approval or his choice; if the depositor does not respond in due time, the bank shall take all necessary measures in favor of the depositor; and the depositor shall be bound to bear the expenses and the commissions.

ARTICLE 314

As soon as the depositor requests to receive the securities, the bank shall return them to him with due care to the time needed to prepare the securities for delivery.

The delivery of securities shall be in the place of deposit, and the securities deposited shall be returned themselves, unless it has been else agreed or the law provides that securities of the same nature or of other kind are to be delivered.

ARTICLE 315

The securities shall be delivered to the depositor or to his successors or to whom they may appoint even if the securities are owned by a third party.

If a third party alleges the ownership of the securities, the bank shall immediately notify the depositor; and shall not deliver the securities to him until the end of dispute by agreement or by the court. The third party shall bring a lawsuit during thirty days from the date of his allegation; otherwise his allegation is considered non-exixting.

3. RENTAL OF SAFE DEPOSIT BOXES

ARTICLE 316

Rental of a safe deposit box is a contract pursuant to which the bank undertakes, against rental, to pose a certain specified safe deposit box at the disposal of a customer, to be used for a certain specified period.

ARTICLE 317

The safe deposit box should be opened with two keys, one of which should be handed in by the bank to the customer lessee and the other shall be kept with the bank. The bank may not give a duplicate of the key to any other person, neither the customer himself nor his authorized agent.

The key handed to the lessee shall remain the property of the bank and must be returned to it by the end of the lease term.

ARTICLE 318

The bank shall be responsible for the safety, custody and fitness for use of the safe deposit box.

The lessee of a safe deposit box may not place therein articles detrimental to its safety or the safety of the place where it lies.

If the safety of the box is threatened or the bank finds that the safe box contains dangerous objects the bank shall notify the lessee to attend in a certain time; if the lessee does not attend the bank shall apply to the competent judge to issue an ex party order to open the safe box in a certain date in the presence of a person appointed by the judge and the lessee, to vacate the box or to withdraw the dangerous objects from it,

and a proces verbal shall be drawn to identify the contents, If the danger is certain the bank, under its responsibility shall open the safe box and vacate it or withdraw the dangerous objects without notification to the lessee or order from the judge.

ARTICLE 319

Where the lessee fails to pay the box rental on the due dates, the bank may, after the lapse of thirty days, from the date of a notice served upon him requiring payment, consider the contract as automatically rescinded and recover the box, after sending notice to the lessee that he must report to the bank, open the box, and vacate its contents.

Where the lessee fails to report on the date set by the bank, the bank may, after serving the notice upon him, apply for an ex party order by the competent judge to open the safe deposit box and vacate it in the presence of a person designated by the judge to that effect, who shall draw a proces verbal listing down the contents. The judge may order that the contents be deposited with the bank, or with a trustee appointed by the judge.

ARTICLE 320

The bank has a right to withhold the contents of the safe box and a right of privilege upon its sale price to satisfy itself with the rental and the expenses.

ARTICLE 321

A precautionary or executioner attachment may be remanded on the contents of the safe deposit box.

The attachment shall be remanded by notifying the bank with the contents of the deed by virtue of which such attachment is levied, and by requiring the bank to state whether it has leased a safe deposit box to the distrainee. Upon receiving such notice, the bank shall forthwith bar the distrainee from using the box and notify him without delay that attachment has been levied on the safe deposit box.

Where the attachment is precautionary, the lessee may request the judge either to lift the attachment or to give him permission to withdraw some or all of the contents of the safe.

Where the attachment is executory, the execution officer shall, after serving a notice upon the distrainee with the date fixed for opening the safe box and after the distrainer has deposited with the court the expenses of forcible opening of the safe and re-amending it, shall be bound to open the safe deposit box, empty its contents in the presence of the distrainer and the execution officer and an inventory of the box contents shall be drawn up, and such contents shall be deposited in accordance with the provisions of the law of civil and commercial procedure.

Where the lessee is absent and the safe deposit box contains papers or documents it shall be delivered to the bank, put in an envelop sealed by the seal of the execution officer and the bank.

The distrainer shall deposit with the bank a sufficient sum for the rental of the safe during the period of the attachment.

ARTICLE 322.

The notifications and papers served upon the lessee are valid if summoned to the last known address of the lessee.

ARTICLE 323

In cases other than those stated in the law, the bank may not open the safe or vacate its contents except by permission of the lessee or in his presence or by virtue of a judgment or an order from the competent judge or from the parquet.

4. MORTGAGE OF FINANCIAL SECURITIES

ARTICLE 324

The mortgage of securities shall be subject to the provisions of the commercial mortgage and the following provisions.

ARTICKE 325

Where the possession of the secured creditor is prior to the mortgage, the mortgage shall be established by mere conclusion of the mortgage contract.

A third party chosen by rhe parties for the custody of the securities, shall be supposed to have waived any right of prior possession unless he makes a reserve, towards the secured creditor, invoking his priority right.

ARTICLE 326

If the securities are mortgaged by a person other than the debtor, its owner shall not be committed except as a real surety.

ARTICLE 327

If the full value of the financial security mortgaged is not paid at the time of creation of the mortgage, the debtor shall pay to the secured creditor two days at least before the date due the unpaid installment. If the debtor does not pay, the secured creditor shall proceed to sell the financial security following the provisions of article 126 of this law(4), and shall pay from the sale price the unpaid portion and the mortgage shall encumber the remainder of the price.

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[4] Article 126 of the code of commerce provides for the procedures to be followed in the execution upon a mortgaged property: the bank shall serve a notice upon the debtor to pay the debt and its annexes, five days later the bank shall apply to the competent judge to order the sale of the mortgaged property. The order of the judge may not be implemented except after five days from the date of notification of the order to the debtor and his surety, defining the date and hour and ..the place of the sale by auction . [note of the author].

ARTICLE 328

The rank of the secured creditor shall rest existing between the parties and as to third parties, upon the return of the mortgaged financial security and its annexes, its value at redemption or upon instruments replacing them.

5. BANK TRANFERS (Virement)

ARTICLE 329

A banking order of transfer is an operation whereby a bank enters a certain specified sum in the debit side of the account of the applicant giving an order in writing for the transfer of such sum to be entered in the credit side of another account.

The following may be effected by such operation:

The transfer of a specified sum from the account of one person to another person's account each having an account in the same bank or in two different banks.

The transfer of a specified sum from one account to another both of which are opened in the name of the person who has ordered the transfer, in the same bank or in two different banks.

2. The agreement between the applicant and the bank shall regulate the terms and conditions of the transfer, and the order may not be to the order of the bearer.

It may be agreed that the transferee shall submit the transfer order himself to the bank instead of being notified by the applicant.

ARTICLE 330

Where the transfer is effected between two different branches or two different banks, any objection to the transfer shall be submitted to the branch or the bank in which the beneficiary's account exists.

ARTICLE 331

The order of transfer may relate to amounts existing in the applicant's account; or relate to amounts the applicant agrees with the bank to add to his account.

ARTICLE 332

The beneficiary shall own the transfer upon its registry in the credit side of his account. The applicant can cancel his order before the registry in the beneficiary's account.

Without prejudice to the provisions of article 237 of this law(5), if it has been agreed that the beneficiary shall submit the transfer order to the bank, the applicant may not cancel this order.

ARTICLE 333

The debt in which payment the transfer order has been made, shall remain existing with its securities and accessories until the transfer has been actually registered in his account.

ARTICLE 334

It is lawful to agree to delay the registration of the transfer made by the applicant or delivered to the beneficiary to submit it directly to the bank; until the end of the day in order that it can be registered with other transfers of the same type effected on the same day.

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[5] Article 237 of the code of commerce relates to the contract of transport and provides for cases where a force majeure occurs and impedes the transporter from implementing his obligation and exonerates him from liability. [Note of the Author].

ARTICLE 335

If the provision of the transfer is less than the sum of the transfer, and the order was submitted by the applicant, the bank shall be entitled to refrain to effect the transfer and it shall notify the applicant without delay.

If the order is submitted directly by the beneficiary to the bank, the bank can effect the transfer of the less amount; and the beneficiary has the right to refuse it. The bank shall earmark the order with the lesser amount or with the refusal of the beneficiary.

The applicant becomes entitled to dispose of the remaining balance upon the bank's registration of the lesser amount or the refusal of the beneficiary to accept this amount.

ARTICLE 336

If the transfer order has not been executed on the first working day following its submission it shall be considered non existing within the part not executed and the order shall be returned to the person who submitted it against a receipt. If it has been agreed on a longer period, the unpaid part of the order of transfer shall be paid with all other orders submitted during the rest of this period.

ARTICLE 337

If the beneficiary has been declared bankrupt the applicant can object the payment of the order even if the beneficiary has received the order of transfer.

The bankruptcy of the applicant does not prevent payment of transfer orders if they have been submitted to the bank before the day of rendering the judgment declaring him bankrupt.

6. SIMPLE CREDIT

ARTICLE 338

A simple credit is a contract by virtue of which a bank places at the disposal of the beneficiary means of payment up to a certain specified sum.

A simple credit is opened for a specified or unspecified term.

ARTICLE 339

A credit opened for an unspecified term may be cancelled by the bank at any time provided that the beneficiary shall be informed at least ten days before the date set for the cancellation, unless provided for otherwise.

In all cases any unused credit which is opened for an unspecified term shall be deemed to have been cancelled by the lapse of six months from the date when the beneficiary is notified of the opening of the credit.

ARTICLE 340

The bank may not cancel a credit before the expiry of its specified term except if the beneficiary is deceased, interdicted or suspends payments; even though a judgment declaring him bankrupt is not yet entered, or when he commits a gross negligence in using the credit opened in his name.

7. DOCUMENTARY CREDIT

ARTICLE 341

A documentary credit is a contract by which a bank undertakes to open a credit upon request of a customer (the applicant) in favor of another person (the beneficiary) against documents representing goods transported or ready for transport.

A documentary credit contract is independent from the contract which occasioned the opening of the credit and the bank remains a stranger from the latter contract.

Any issues not provided for in this law shall be subject to the Uniform Customs and Practice of Documentary credits issued by the International Chamber of Commerce.

ARTICLE 342

The bank which opened a credit must perform the conditions of payment, acceptance and discount agreed in the credit contract if the documents conform to the stipulations and conditions contained in said contract(6) .

ARTICLE 343

A documentary credit may be revocable or irrevocable.

A documentary credit is irrevocable unless it is expressly agreed that it is revocable.

[6] This provision comes contrary to the right order of things. It should have been : … the ICC rules provided that it may not contain solutions contradicting the public policy in Egypt. [Notice of the Author].

ARTICLE 344

A revocable documentary credit does not create any obligation on the bank towards the beneficiary and the bank may at any time amend or cancel it of its own accord or at the request of the applicant.

ARTICLE 345

The irrevocable documentary credit shall be direct and binding upon the bank towards the

beneficiary and any bona fide bearer to whom the rights are transferred.

It is not permissible to cancel an irrevocable documentary credit except by approval of all those concerned in it.

ARTICLE 346

An irrevocable documentary credit may be confirmed by another bank which in turn becomes jointly and severally obligated and directly bound towards the beneficiary.

A mere notification of the opening of an irrevocable documentary credit sent to the beneficiary through another bank shall not be considered confirmation of the credit by such other bank.

ARTICLE 347

The bank shall verify that the documents received are in conformity with the instructions of the applicant.

Where the bank rejects the documents it shall forthwith send notice of the rejection to the applicant giving reasons (7).

ARTICLE 348

The bank shall not be liable where the documents appear on their face to be in conformity with the instructions received from the applicant.

The bank shall not bear any obligation relating to the goods in respect of which the credit was opened.

ARTICLE 349

A documentary credit is neither assignable nor divisible unless the bank which opened it is authorized to pay all or part thereof to a person or a number of persons other than the first beneficiary upon request from the beneficiary. An assignment is not effected unless it is approved by the bank. Unless otherwise agreed, the assignment shall be effected to all assignees at one time only, unless otherwise agreed upon.

ARTICLE 350

Where the applicant for the documentary credit fails to pay the value of the shipping documents which conform to the conditions of the opening of the credit within six months of the date of being informed of the arrival of said documents the bank may proceed to a sale of the goods and the provisions of mortgaged goods shall be applied.

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[7] The notification should be sent, also, to the beneficiary, otherwise keeping the documents without notice of rejection to the beneficiary, shall be interpreted to be acceptance of them. According to the ICC rules the bank has seven working days after which the documents may not be refused. It is better to make notice to both the beneficiary and the applicant, because the applicant may waive his right of rejection against some discripancies. [Note of the Author].

8. DISCOUNT

ARTICLE 351

Discount is an agreement by which a bank undertakes to pay in advance the value of a negotiable instrument or any other negotiable document to the beneficiary of the document in consideration for conveyance of its ownership to the bank; but the beneficiary remains bound to refund the value to the bank if the original debtor fails to pay.

The bank shall deduct from the amount paid to the beneficiary of the discount interest on the sum of the instrument or document and commission where stipulated.

ARTICLE 352

The interest shall be calculated on the basis of the time which elapses up to the maturity of the document or on the basis of a longer period in regard to mortgage and other operations which provide for an undertaking by the beneficiary of the discount to refund whatever sums he had been disbursed before the maturity date of the document.

ARTICLE 353

The beneficiary of a discount shall refund to the bank the face value of the document which was not paid.

ARTICLE 354

The bank shall have all the rights which are created by the document discounted vis-à-vis the principal debtor of the document, the beneficiary of the discount and the other debtors.

Furthermore the bank is vested, vis-à-vis the beneficiary of the discount, with a special right of recovery of the amounts placed at his disposal without deduction of such interest and commission which was received by the bank; the bank is, also, vested with said right in regard to the unpaid documents regardless of the cause of refusal to pay.

9. THE LETTER OF GUARANTEE

ARTICLE 355

A letter of guarantee is a written undertaking issued by a bank upon request of a customer (the applicant) to pay upon request a certain specified or specifiable sum to another person (the beneficiary) unconditionally and despite any contestation from the applicant or a third party.

Issues for which this law did not provide a written rule and a customary rule does not exist, shall be subject to the provisions of international transactions and usages related to letters of guarantee (8) .

ARTICLEE 356

The bank may require the presentment of a personal security or a security in kind against the issue of a letter of guarantee. The security may be money, securities, goods or an assignment of the right of the applicant towards the beneficiary.

ARTICLE 357

A beneficiary may not assign his right which arises from the letter of guarantee (9) save with the bank's approval. The bank must have prior approval from the applicant to such assignment.

ARTICLE 358

The bank may not refuse payment to the beneficiary by a reason relating to its relationship with the applicant or the relationship between the applicant and the beneficiary.

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[8] This provision is very dangerous because the ICC rules of guarantees provide that any person signing an undertaking can be sued in accordance with its rules. The layman in domestic transactions is not exempt from this severe application. I believe that this article is applicable only in local transactions. (Note of the Author).

[9] To a third party [Note of the Author].

ARTICLE 359

The bank shall be discharged from liability towards the beneficiary where it does not receive a request from the beneficiary to pay, during the validity of the letter of guarantee unless it has been agreed to extend the validity prior to expiry.

At the end of the term of the letter of guarantee, without payment to the beneficiary the bank shall refund to the applicant whatever security he has presented to the bank for the issuance of the letter of guarantee.

ARTICLE 360

Where the bank pays off the sum agreed in the letter of guarantee to the beneficiary it shall have recourse against the applicant for the sum so paid and its interest.

10. CURRENT ACCOUNTS

ARTICLE 361

A current account is a contract by which two persons agree that the rights and debts arising from their mutual relations are converted into entries to be made in the account, clearance of which may not be effected successively but the final balance resulting upon the closure of the account shall alone constitute a callable debt.

If it is agreed that after the payments of one party end, the payments of the second party begin, such account is not considered a current account.

The articles hereunder shall apply even if one of the parties is not a bank.

Article 408 of this law related to the joint accounts shall apply upon joint current accounts.

ARTICLE 362

All items of the current account are indivisible before the closure of the account and the extraction of the final balance.

Clearance may not be effected between an individual item in a current account and another item in the same account.

ARTICLE 363

The entering of items in the current account shall not extinguish the rights of either party emanating from the underlying contracts and transactions from which such items resulted.

ARTICLE 364

If a debt in the current account extinguishes or is decreased for a reason subsequent to its entry, this item shall be deleted or amended and the account be changed accordingly(10).

ARTICLE 365

A current account may, by agreement of the parties, or by a provision of law, be temporarily suspended on intervals to find out the position of each party. Each of the parties can withdraw the temporary balance or a part thereof.

ARTICLE 366

Payments in current accounts may not avail of interest unless otherwise agreed. If interest is agreed it shall be the same rate as the Central Bank decrees, on the maturity date, unless agreed on a fewer rate.

Compound interest should not be agreed except if one of the parties to the current account is a bank.

ARTICLE 367

All debts which arise from such business relations as are effected between both parties to the current account, shall be, by the force of law, entered in said account, save where such debts are secured by legal or contractual security rights.

[B] Banks in Egypt use the French term : contre passation.

However, debts secured by contractual security rights whether they have been established by the debtor or by a third party, may be entered in the current account subject to the approval of all parties. In such case the security shall remain securing the balance of the current account, within the value of the secured debt. Such security cannot be invoked against third parties unless it is publicized if the law stipulates its publicity.

ARTICLE 368

Where the payments in current account are in cash and valued in different currencies or if these are non-fungibles, the parties may agree to enter it in the current account under separate sections, with due care to the similarity of the items, and provided that the parties shall accept the unity of the account despite the numerous sections it contains.

The balance of each separate section shall be convertible from one currency to the other in a manner that at the time agreed, or at the most on the closure of the account, it becomes possible to make a setoff and extract one sole balance.

ARTICLE 369

Where the current account is open for an agreed term, it shall be closed by the end of such term; and it can be closed before its term by common agreement of the parties.

If no term is agreed upon, the current account can be closed at any time by either party, provided that the prior notice agreed upon has been observed, otherwise the customary notice period shall have been observed.

In all cases the current account shall be closed by the death of a party; being declared bankrupt, or insolvent or interdicted.

ARTICLE 370

At the time of closure of the current account the balance should be extracted and it becomes due, unless otherwise agreed; and if some operations are still running and if the balance shall be affected by its result, then the balance shall be due on the day following the end of these operations.

ARTICLE 371

If one of the parties to the current account is a bank, the account shall be interrupted on the end of the financial year of the bank, and such interruption is not tantamount to closure of the account, but it is conducted the following day in the same account.

ARTICLE 372

The limitation of the balance and its interest shall be governed by the general rules of limitation. The interest accrues as of the day following the closure of the account.

ARTICLE 373

The creditor of a party of the current account is allowed to effect an attachment during the operation of the account. In such case the bank shall make a temporary position of the account to find out if at the time of effecting the attachment it was debit or credit.

ARTICLE 374

If one of the parties falls in bankruptcy, it is not allowed to invoke against the group of debtors in his bankruptcy estate any security levied on the account, after the date of the judgment defining the temporary date of cessation of payment of debts, in order to save the anticipated balance, within the value of the debit balance at the time of establishing the security. However the security can be invoked on the difference, if any, between the final balance of closure and the debit balance attached for; unless it is evident that the creditor had known of the issue of cessation of payment at the time he established the security.

ARTICLE 375

Where the resulting amount of the discount of a negotiable instrument is entered in the current account but the value thereof is not paid on the date of maturity, the person discounting the bill may cancel the entry of its value into the current account by a counter entry even though the person who presented it for discount has been declared bankrupt.

No counter entry may be made except in regard of negotiable instruments not paid on maturity Any agreement to the contrary shall be a nullity.

ARTICLE 376

Any action brought for the rectification of a current account for error, omission or repetition of items is not acceptable by the lapse of more than three consecutive years, unless during such period a party invokes against the other party the demand of rectification of the account, or, in the case of current account with a bank, it has been established that the customer did not receive from the bank any statement of account during such period.

In all cases the action prescribes by the lapse of five years as of the date the right to bring a lawsuit of rectification has become established.

ARTICLE 377

Where the current account is open in a bank, the bank shall not divulge any indications, information about the account number, its movement or its balance except to the account owner, his mandate, his heirs or legatees after his death, or in accordance with the law No. 205 of 1990 about the secrecy of bank accounts.

END OF THE ARE LAW

LAWS of BANKINg IN THE MIDDLE EAST

ARE; BAHRAIN; IRAQ; KUWAIT

OMAN; QATAR; UAE

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KINGDOM OF BAHRAIN

BY

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2015

II

KINGDOM OF BAHRAIN

CODE OF COMMERCE –

BANKING OPERATIONS

introduction

The code of commerce of the Kingdom of Bahrain, has been enacted by Decree Law No. 7 of 1987 dated the 22nd of March 1987. Its entering into force began on the first day of the month following the lapse of two months after its publishing in the official journal.

Banking operations occupy Chapter three beginning from article 274 – 349.

THE AUTHOR

CHAPTER THREE
BANKING AND COMMERCIAL OPERATIONS

ARTICLE 274

The provisions of this chapter shall apply to the operations effected by banks with its customers whether they are merchants or otherwise and whatever may be the nature of these operations

SECTION ONE THE MONEY DEPOSIT

ARTICLE 275

The money deposit is a contract which confers to the bank the possession of the deposited money and to dispose thereof in conformity with its professional activity, and shall be bound to return the equivalent to the customer in the same currency.

It is permissible to stipulate interest upon the deposit and in this case the provisions of paragraphs 4,5, and 6 of article 76 of this law shall apply.

ARTICLE 276

The bank is bound to open an account for the deposit to inscribe in it all the operations effected between the bank and the customer or between the bank and a third party for the account of the customer.

Operations agreed to be excluded from the account may not be inscribed in the account.

ARTICLE 277

The deposit contract does not entitle the depositor to withdraw any sum from the account if he has no credit balance in it.

Where the bank, however, effects operations upon the account devolving in a credit balance in favor of the bank it shall give notice to the depositor to settle the situation.

ARTICLE 278

The money deposit shall be returned upon demand unless otherwise agreed. The depositor has the right to dispose of the balance or any part thereof.

This disposition may be subject to a prior notice or to a term.

ARTICLE 279

The bank shall send a statement of the account every three months, unless the custom or the agreement provides for more than one statement during such period. The statement shall contain a copy of the account and the sum of the balance after the last movement.

ARTICLE 280

Deposits and withdrawals shall be effected in the head office of the bank and the branch unless otherwise agreed.

ARTICLE 281

Where the customer retains several accounts in the bank or its branches each account shall be considered separate from the others unless otherwise agreed.

ARTICLE 282

Where the bank issues a deposit saving book such book must be issued in the name of the person for whom it pertains. The sums deposited or withdrawn shall be inscribed in the book. Items that appear in the book shall be signed by an official of the bank and shall be evidence in the relation of the bank and the customer that the said indications are truthful. Any agreement to the contrary shall be null and void.

ARTICLE 283

The bank may open a joint account between two or more persons in which they shall have equal rights, unless otherwise agreed. Such account shall be subject to the following:

The joint account is opened by the co-owners of the account or by an authorized agent by virtue of a power of attorney duly authenticated. The agreement of the parties to the account shall be observed in withdrawals.

In case an attachment is effected on one of the co-owners of the joint account, the attachment shall apply to the share of the distrainee and such share shall be put aside the balance of the account on the day the attachment has been served on the bank. No withdrawals from the amount put aside may be effected; and all the owners of the joint account or their agent shall be notified with the attachment during five days.

Where the bank effects set off between different accounts of one of the owners of the joint account the bank may not extend such set off to the joint account except with written approval from all the owners of the account.

Where a co-owner dies or becomes legally incompetent the other co-owners must inform the bank accordingly and of their wish to continue the account within no more than ten days from the death or becoming incompetent as the case may be. The bank shall stop withdrawing from the joint account until a successor or curator is appointed.

SECTION TWO SECURITIES DEPOSIT

ARTICLE 284

Save as otherwise agreed, a bank may not use the financial securities deposited with it nor may it exercise the rights resulting there-from except for the depositor's interest.

ARTICLE 285

The bank shall safe-keep the financial securities exercising the same care as that exercised by a remunerated depositary.

The bank may not abandon possession of said securities except for a cause necessitating same.

The depositor is bound to pay the agreed fee or that is customary in addition to the necessary expenses.

ARTICLE 286

Unless otherwise agreed the bank shall receive the interest, profit, value becoming due and in general such other sums which may become due by reason of the security.

The sum received by the bank shall be placed at the disposal of and entered into the account of the depositor.

The bank shall carry out all operations that may be necessary to safeguard the rights attached to the security

ARTICLE 287

Checks and other negotiable instruments deposited with the bank, withdrawn on the bank or not or owned by the bank, shall not be withdrawn except after payment or collection.

The bank shall effect collection of such checks and negotiable instruments in the name of the owner of the account and in his favor.

The bank has the right to delete any entry effected previously unless paid or collected.

ARTICLE 288

The bank shall notify the depositor of any matter concerning the security which needs his approval or depends on his opinion. In case of urgency or possibility of forfeiture of the right included in the security the notification may be by telegram and if the depositor's instructions are not received in due time the bank shall dispose of the right in a manner beneficial to the depositor.

The depositor shall bear the costs incurred by the bank in addition to the usual commissions.

ARTICLE 289

The bank must return the securities deposited by the depositor on demand and at any time with due consideration for the time required for the preparation of such documents for return except in the following cases:

Where the bank exercises a right of retention on the securities, until satisfaction of its rights.

Where the bank has a privilege of safeguarding.

Where the bank effects seizure for itself under its hand upon the securities.

Where an attachment if effected on the securities by any person claiming a right or objecting the delivery of it to the depositor in view of a right he contends.

Where the deposit contract has been substituted by another contract.

Where the depositor in declared bankrupt after the deposit date.

The return of securities shall be in the same place where the deposit took place and the bank shall return the securities in kind unless an agreement or the law stipulates otherwise.

ARTICLE 290

The bank has a legal privilege right securing its rights resulting from the safeguarding of securities and the expenses ancillary to the keeping of rights represented by the securities deposited with it.

ARTICLE 391

A security must be returned to the depositor, his successor or the authorized agent even when it contains something purporting that it is owned by a third party.

SECTION THREE LEASE OF SAFE DEPOSIT BOXES

ARTICLE 293

The lease of safe deposit boxes is a contract by which a bank undertakes to place a certain specified safe deposit box at the disposal of a lessee for a certain period to take advantage thereof against an agreed rent.

ARTICLE 294

The bex shall have two different locks; the bank shall deliver one key to the lessee and a duplicate key shall be kept by the bank; no other duplicate of the key may be delivered to any person other than the lessee and the bank.

The key handed over to the lessee shall remain the property of the bank and must be returned to it on expiry of the term of the lease.

The bank has the right to use other means such as automatic closing or plastic key cards.

ARTICLE 295

The bank may not permit any person other than the lessee or his agent to use the safe deposit box.

ARTICLE 296

The lessee may not waive the lease of the safe or a part thereof or assign the lease to a third party unless otherwise agreed.

ARTICLE 297

Where the safe is leased to several persons every one of them shall have the right to use it solely unless otherwise agreed.

In case the lessee or one of the lessees dies the bank may not, as of the date he knew of the death, permit the open of the safe except by the acceptance of all those concerned or by a decision from the President of the high civil court or a delegate authorized by him in this respect.

ARTICLE 298

The bank shall take precautions to secure the safety of the safe deposit box and safeguard the contents thereof. The bank shall keep a book wherein the dates and hours of opening the safe by the lessee are registered.

ARTICLE 299

The lessee is forbidden from placing anything that may threaten the safety of the bank or the other boxes.

Where the bank finds that the safe deposit box has become threatened by a danger or that it contains dangerous substance the bank must send immediate notice to the lessee requiring him to report to the bank to empty the box and remove the dangerous substance. Where the lessee fails to report at the appointed time the bank may apply to the President of the high civil court or one of his delegates, to give permission to open and empty the safe deposit box or to withdraw the dangerous substance in the presence of the person appointed by the President of the high civil court or his delegate for the purpose. A report of the event shall be drawn out stating the contents of the safe deposit box.

where the danger is eminent the bank may on its own responsibility open and empty the safe deposit box or remove the dangerous substance without sending the notice or seeking the permission of the court.

ARTICLE 300

Where the lessee fails to pay the rent of the safe deposit box on the dates of maturity the bank may, after the lapse of three months from the date of a registered letter with acknowledgement of receipt sent to him requiring payment, consider the contract rescinded by the force of law without need for a lawsuit.

Where the period of the contract ends or the contract is rescinded by the force of law the bank shall recover the safe deposit box after sending notice to the lessee requiring him to report to open it and remove its contents.

Where the lessee fails to report on the date fixed in the notice or attends and refuses to remove the contents of the safe the bank may petition the President of the high civil court or one of his delegates charged with this concern requesting permission to open and remove the contents of the safe deposit box in the presence of a person appointed by the court; a report of the event shall be made and signed by the bank and the appointed person stating the contents of the safe deposit box

The President of the high civil court or one of his delegates may decree that the contents be deposited with the bank or in the safe of the court.

ARTICLE 301

The bank shall have a privileged security right upon the sums deposited in the box or upon the proceeds of the sale of its contents to satisfy the rent and the expenses due.

ARTICLE 302

A provisional or executioner attachment may be effected on the safe deposit box.

The attachment is effected by serving on the bank the contents of the execution document pursuant to which the attachment is being made and requiring it to state whether it has leased a safe deposit box to the distrainee and once the bank is notified it shall bar the lessee from using the safe deposit box. The bank shall receive a copy of the proces-verbal and the lessee shall be accordingly summoned.

Where the attachment is provisional the lessee may apply to the court for cancellation of the attachment or for a permission to withdraw some of the contents of the safe deposit box.

Where the attachment is executioner the bailiff must summon the lessee defining a date to open the safe deposit box and empty it. Where the lessee fails to appear the execution officer shall open it by force if the distrainer pays the expenses of open and of maintenance of the safe. The execution officer shall empty the safe and make an inventory of its contents in the presence of the representatives of the bank and the lessee if any. The contents shall be auctioned in accordance with the provisions of the Procedural commercial and civil law as amended.

Where the safe deposit box contains papers or documents not covered by the forcible sale the execution officer must deliver them to the lessee and if he is present at the time of opening the safe deposit box or they must be handed over to the bank for safekeeping until they are claimed by the lessee or his successors.

The distrainer shall pay to the bank a sufficient amount to guarantee the fee of the safe during the period of attachment.

ARTICLE 303

The bank may not open or empty the contents of the safe deposit box except by permission from the lessee or in execution of a decision from the President of the high civil court or a delegate accredited in this respect.

CHAPTER FOUR BANK TRANSFERS

ARTICLE 304

A banking transfer is an operation whereby a bank enters a certain specified sum in the debit side of the account of the applicant giving an order in writing for the transfer of such sum to be entered in the credit side of another account.

The following may be effected by such operation:

Transfer of a certain specified sum between two persons each of whom having an account with the same bank or with different banks,

Transfer of a certain specified sum from one account to another both of which is opened in the name of the applicant with the same bank or in two different banks. This operation encompasses set off and transfer.

The agreement between the bank and the applicant lays down the conditions for the issue of the order; however, the transfer order may not be to bearer or to the order of a person.

Where the beneficiary in the account transfer is empowered to transfer the sum to the credit side of an account belonging to another person, the name of such person shall be inscribed in the order to transfer.

ARTICLE 305

Where a banking transfer is effected between two branches of a bank or between two different banks any objection of a third party regarding the transfer must be notified to the branch or the bank keeping the beneficiary's account.

ARTICLE 306

The transfer order may be in regard of sums actually existing in the account of the applicant or amounts agreed with the bank to be entered in his account within a certain specified period.

ARTICLE 307

It may be agreed that the beneficiary of a transfer order may submit it in person to the bank instead of it being served on the bank by the applicant.

ARTICLE 308

The beneficiary becomes the owner of the value of a banking transfer from the time it is entered in the debit account of the applicant; a transfer order may be revoked until the foregoing entry is effected.

However, where it is agreed that the beneficiary shall himself submit the order of transfer to the bank the applicant may not revoke it with due consideration of the provisions of article 313.

ARTICLE 309

It may be agreed to postpone the execution of certain specified transfer orders – whether they are sent directly by the applicant or are presented by the beneficiary – to the end of the day to be executed with other orders of the same kind which are presented by the bank on the same day.

ARTICLE 310

Where the provision for payment is less than the value stated in the payment order and if the order has been made directly by the applicant, the bank may refuse to execute the order provided it shall notify the applicant accordingly without delay.

Where the transfer order is presented by the beneficiary the bank shall enter in his account the partial provision unless the beneficiary refuses. The bank must make an earmarking on the transfer order purporting to the entry of the partial consideration or to the rejection made by the beneficiary.

Where the bank refuses to comply with the order or the beneficiary refuses to accept the partial provision as mentioned in the two preceding paragraphs, the applicant remains entitled to dispose of the partial provision.

ARTICLE 311

Where the bank fails to execute the transfer order on the first working day which followed the day of presentment, the order shall be null and void up to the amount which was not executed and hence it must be returned to the presenter against receipt.

Where a longer period than the foregoing has been agreed the unexecuted transfer order shall be added to such orders which are presented on the following days.

ARTICLE 312

The debt for the settlement of which the transfer order is made shall remain standing together with the annexes until the entry has been actually entered in the credit account of the beneficiary.

ARTICLE 313

Where the beneficiary is adjudged bankrupt the applicant may object the execution of the transfer order even though the beneficiary has received the order himself.

The declaration of the bankruptcy of the applicant shall not prevent the execution of the transfer orders issued by him where they have been presented to the bank prior to the entering of the declaration of bankruptcy; save where the court decrees otherwise.

CHAPTER FIVE THE SIMPLE CREDIT

ARTICLE 314

A credit is a contract by which the bank places at the disposal of the beneficiary, directly or indirectly, means of payment up to a certain specified sum.

A credit is opened for a specified or unspecified term.

ARTICLE 315

A credit opened for an unspecified term may be cancelled by the bank at any time provided that the beneficiary has been informed at least fifteen days before the date set for the cancellation.

shall be null and void any agreement which vests upon the bank a right to cancel an unspecified term credit without having to send notice or to send notice at a lesser time limit than specified in the preceding paragraph.

SECTION TWO DOCUMENTARY CREDITS

ARTICLE 317

A documentary credit is a contract by which the bank undertakes to open a credit upon request of a customer (the applicant) in favor of another person (the beneficiary) against documents representing goods transported or ready for transport.

A documentary credit contract is independent of the contract which occasioned the opening of the credit and the bank remains a stranger of the latter contract.

ARTICLE 318

The bank which has opened a credit must scrutinize the conditions of payment, acceptance and discount which have been agreed in the credit contract if the documents conform to the stipulations and conditions contained in said contract.

ARTICLE 319

A documentary credit may be revocable or irrevocable.

A documentary credit is revocable unless it is agreed that it is irrevocable.

A documentary credit may be divisible, transferable or non-divisible and non-transferable.

ARTICLE 320

A revocable documentary credit does not create any obligation on the bank towards the beneficiary; the bank may at any time amend or cancel it of its own accord or at the request of the applicant without notice to the beneficiary, provided that the amendment or cancellation is in good faith and in a suitable time.

Where the shipping documents are presented during the validity of the credit prior to the cancellation of the credit and are in conformity with the particulars and conditions of the credit contract, the bank as well as the applicant shall be bound to the beneficiary.

ARTICLE 321

The bank's obligation in regard to an irrevocable documentary credit shall be definitive and direct towards the beneficiary and any bona fide holder of the document drawn for the performance of the underlying contract.

An irrevocable documentary credit may neither be cancelled nor amended except by the agreement of all parties concerned.

The validity period of the documentary credit may not be extended for any reason save the holidays even if its expiry date coincides with the interruption of the business of the bank for coercive circumstances, unless there is an express prior proxy from the applicant in this respect.

ARTICLE 322

An irrevocable credit may be confirmed by another bank which in turn becomes obliged absolutely and directly towards the beneficiary.

A mere notification of the opening of an irrevocable documentary credit sent to the beneficiary through another bank shall not be considered confirmation by such other bank of the credit.

ARTICLE 323

The papers submitted for applying to open a documentary credit, its confirmation or notification shall contain precisely the documents against which the operations of payment, acceptance or discount shall be effected.

The bank shall ascertain the conformity of documents to the instructions of the applicant stated in the letter of credit sent to the beneficiary.

Where the bank rejects the documents it shall forthwith send notice of the rejection to the applicant stating the discrepancies.

ARTICLE 324

The bank shall not be liable where the documents appear to be in conformity with the instructions received from the applicant.

The bank shall not bear any liability in relation to the specification of the goods in respect of which the credit was opened, its quantum, its weight, its apparent condition, its packaging, or its value as well as the fulfillment of the obligations of dispatchers and insurers.

ARTICLE 325

A bank may not issue a divisible documentary credit unless authorized by the applicant

The beneficiary may not retransfer the documentary credit in whole or in part to another person or persons unless he is authorized by the bank and provided for in the letter of credit.

Shipment occurs one time and transshipment is not allowed unless the letter of credit authorizes it.

Circulation of a shipment document (11) to order shall be by endorsement; if it is to bearer its circulation shall be by delivery and if it is nominative the procedure of transfer of rights shall be adopted.

ARTICLE 326

Where the applicant for the documentary credit fails to pay the value of the shipping documents which conform to the conditions of the opening of the credit within three months of the date of being informed of the arrival of said documents; the bank may sell the goods following the procedures of execution upon mortgaged movables.

The provisions of paragraph 1 shall not apply to credits opened by official or semi-official departments of the public sector companies; in such case the provisions of mortgage shall apply to the goods.

[11] The code of commerce of the kingdom of Bahrain between my hands says in Arabic that the 'transport occurs by endorsement of the letter of credit if it is to the 01rder..'. I doubt there is a misunderstanding, because the letter of credit may not be to order or to bearer.. The correct word is 'the endorsement of the letter of transport'.

THE LETTER OF GUARANTEE

ARTICLE 331

A letter of guarantee is an undertaking issued by a bank upon request of a customer (the applicant) to pay a certain specified or specifiable sum to another person (the beneficiary) if requested during the period of validity of the letter to pay. The letter of guarantee shall state the purpose for which it is issued.

ARTICLEE 332

The bank may require for the issue of the letter of guarantee, the presentment of money as security (cover) or instruments having a financial or commercial value or against the assignment of the applicant's right.

ARTICLE 333

A beneficiary may not assign his right which arises from the letter of guarantee save with the bank's approval.

ARTICLE 334

The bank may not refuse payment to the beneficiary by reason of the bank's relation with the applicant or with the beneficiary or the applicant's relation with the beneficiary.

ARTCLE 335

The bank shall be discharged from liability towards the beneficiary where it does not receive a request from the beneficiary to pay during the validity of the letter of guarantee unless it has been agreed to extend the validity prior to expiry.

The bank, after the end of the period of validity of the letter of guarantee, shall return to the applicant the security provided by him.

ARTICLE 336

Where the bank pays off the sum agreed in the letter of guarantee to the beneficiary it shall subrogate him in having recourse against the applicant for the sum so paid.

CHAPTRE NINE CURRENT ACCOUNT

ARTICLE 337

A current account is a contract by which two persons agree to enter in an account reciprocal and overlapping payments of debts which arise from operations effected between them, such as delivery of money, property, owned commercial papers, and others, and to replace the settlement of each payment of such debts separately by a total settlement resulting in the balance of the account on closing it.

ARTICLE 338

Shall be entered, by law, into the current account all debts resulting from business relations effected between the parties to the account unless such debts are accompanied with legal security rights or contractual security rights, or by agreement of parties to exclude a debt from the account.

However, debts accompanied with contractual security right may be entered into the current account whether they may be submitted by the debtor or by a third party if the parties expressly so agree. The security, then, shall guarantee the debit prospective balance within the limits of the secured right.

Where the law prescribes certain procedures for the conclusion of the security right or for its opposability towards third parties, the security right shall not be transferred to the debit balance or be opposable against third parties except as of the accomplishment of such procedures.

ARTICLE 339

Where the individual entries of the current account contain cash debts valued in various currencies or non-fungible articles; both parties may agree to have them entered in the account provided that they are entered in separate columns and consideration shall be had to the similarity of payments contained therein and provided both parties declare that the account remain united in spite of the plurality of entries.

The balances of the above columns must be transferable so that that at the time fixed by both parties or at the latest on closure of the account a set-off can be made in regard thereof in order to extract one single balance.

ARTICLE 340

Where a term has been fixed for the closure of an account it must be closed at the expiry of said period; it may, however, be closed prematurely by agreement of both parties.

Where a term has not been fixed for the closure of a current account it may be closed at any time at the discretion of either party with due consideration to the time limits agreed or those which are customary.

In all cases an account is closed by the death, insolvency, declaration of bankruptcy or interdiction of either party.

The balance of the account shall be extracted on the closure of the account, The balance becomes due immediately unless the parties agree otherwise, or some of the operations that must be entered are not yet mature and its inclusion shall alter the balance.

ARTICLE 341

Either party to the account has the right to dispose of the credit balance in his favor at any time unless otherwise agreed.

ARTICLE 342

No setoff may be effected between an entry in the current account and another entry.

ARTICLE 343

Where the entry results from a right that has vanished or been reduced for a reason prior to its inscription in the account it shall be cancelled or reduced and the account be amended accordingly.

ARTICLE 344

Debts entered into a current account are not subject to rules of prescription or production of interest in the manner followed before their entry in the account.

Interest shall be calculated according to the rate agreed. If a rate has not been agreed the rate shall be that of the Bahrain Monetary Agency or that established by banking custom.

Interest on the interests [compound] shall be calculated as of the time of being entered into the account during its continuance with due attention to the custom governing periods of time for the entry of interest save where otherwise agreed.

ARTICLE 345

The general rules shall apply to the prescription of the due balance and its interest.

The legal interest shall accrue on the balance of the current account as of the date the account closure unless otherwise agreed.

ARTICLE 346

The entries in the current account as a whole are not divisible before the closure of the account or the extraction of the final balance. The total setoff of all entries in the account may not occur except after the closure of the account.

The creditor of either party to the account may, however, levy seizure on the account during its running upon its credit balance at the time the seizure is levied. In this case the party upholding the account shall make a temporary balance to find the position of the distrainee at the time of seizure.

Where it has been agreed to prevent the distrainee from disposing of his credit balance during the running of the account the attachment shall not be effective except upon the final balance if appeared in his favor at the time of closure.

ARTICLE 347

Where either party to the account is adjudged bankrupt a mortgage is established on the properties of the bankrupt after the date set by the court for cessation of payments to guarantee the probable debt of the balance may not be adduced against the creditor's assembly in the sum of the debit balance on the date of establishing the mortgage.

The mortgage may be adduced against the creditor's assembly in regard to the difference, if any, between the sum of the debit balance on the date of establishing the mortgage and the sum of the balance on closure of the account, unless it is proved that the contracting party was, on the date of establishing the debt, aware that the debtor has ceased payments.

ARTICLE 348

Where the proceeds of the discount of a negotiable instrument is entered into the current account and has not been paid on maturity the person who discounted the instrument may where the value thereof has not been paid on the maturity date cancel the entry by a counter entry, even where the person who presented it for discount has been declared bankrupt.

A counter entry means entering a sum equal to the value of the negotiable instrument plus the legal interest as of the date of maturity and the costs in the debit side of the current account.

The counter entry may not be made except in regard to negotiable instruments the value of which would not have been paid on the date of maturity; any agreement otherwise shall be null and void.

ARTICLE 349

A lawsuit to rectify the current account is inadmissible even where the claim is based on an omission or error or repetition of the entry or any other rectification, in regard to entries after the lapse of one year as of the date of receipt of the statement of account notifying the final liquidation sent by registered post accompanied with acknowledgement of receipt.

In all cases shall prescribe by a period of five years each claim related to a current account; such period shall run as of the date the account is closed.

END OF LAW OF BANKING

IN THE KINGDOM OF BAHRAIN

LAWS of BANKINgIN
THE MIDDLE EAST

III

COMMERCIAL CODE OF IRAQ
BANKING OPERATIONS

INTRODUCTION

The code of commerce of Iraq of 1967 was replaced by this code. All the Arab codes of commerce were laid by committees headed by Professor Dr. Mohsen Shafik or some members of his school. He began Professor and Head of the division of commercial law and Maritime law in the Faculty of law of the University of Alexandria, and some years later came to the Cairo University and died in 1996.

The Author

COMMERCIAL CODE OF IRAQ

BANKING OPERATIONS

PART THREE

CHAPTER ONE MONEY DEPOSITS

ARTICLE 336

Money deposit is a contract authorizing the bank to own the monies deposited therein and to dispose thereof as is consistent with its professional activities. It must be returned in liquid money.

ARTICLE 337

The bank shall open an account for the depositor wherein shall be entered the operations effected between both parties or such operations effected between the bank and a third party for the account of the depositor.

Where both parties agree that an operation should not be entered in the account, then no mention shall be made in the account.

ARTICLE 338

A money deposit contract may not create a right for the depositor to draw from the bank sums in excess of the sums he has deposited therein.

Where the bank carries out operations which render the depositor's balance in debit, the bank shall inform him immediately with the indebtedness in order for him to adjust his position.

ARTICLE 339

The bank shall send a statement of account at least once each year unless custom or agreement provides otherwise. The statement shall contain a copy of the account and the balance after the last transaction.

ARTICLE 340

A money deposit is refunded on demand, save when otherwise agreed. A depositor may at any time dispose of all or part of his credit balance, the exercise of the forgoing right may be conditional on giving notice or until the lapse of a certain specified term.

ARTICLE 341

The deposit and withdrawal shall be effected through the branch of the bank wherein the account was opened, unless otherwise agreed.

ARTICLE 342

Where a depositor holds several accounts in the same bank or in branches of the same bank, each such account shall be considered independent from the others unless otherwise agreed.

ARTICLE 343

A bank may open a joint account for two or more persons putting them on the same footing unless there is an agreement to the contrary and with the observation of the following stipulations:

A joint account is opened by all co-owners or by a person holding authority from the owners of the joint account certified by a competent authority. The agreement of the account holders shall be observed in regard to the withdrawals;

Where an attachment is made on the balance of a co-owner of the joint account, it shall be valid in regard to the distrainee's share of the balance of the account on the date of the notification effected against the bank. The bank shall stop withdrawal of the equivalent of the seized share of the joint account and shall notify the co-owners or their representatives of the attachment within no more than five days.

The bank may not when effecting a set-off between the various accounts of one of the co-owners of a joint account include said account in the set-off except with the written approval of the other co-owners;

Where a co-owner dies or becomes legally incapacitated the other co-owners must inform the bank accordingly and of their wish to continue the account within no more than ten days from the death or becoming incapacitated as the case may be. The bank shall stop withdrawal from the joint account until a successor is appointed.

CHAPTER TWO DEPOSIT OF FINANCIAL SECURITIES

ARTICLE 344

Save as otherwise agreed, a bank may not use the financial securities deposited with it nor may it exercise the rights resulting there-from except for the depositor's interest (12).

ARTICLE 345

The bank shall safe-keep the financial securities exercising the same care as that exercised by a depository who receives remuneration.

The bank may not abandon possession of said securities except for a cause necessitating same.

ARTICLE 346

Unless otherwise agreed the bank shall receive the interest, profit, value and such other sum which may become due by reason of the security.

The sum received by the bank shall be placed at the disposal of and entered into the account of the depositor.

The bank shall carry out all operations that may be necessary to safeguard the rights attached to the security, such as the receipt of instruments which are granted to the security without consideration, presentment of securities for replacement, placing seals thereon or the addition of new dividend voucher.

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[12] This chapter is out of the époque because almost all securities are now beneficial and deals occur through a central depository. Shares and securities in paper are no longer existing in almost all Arab countries.

ARTICLE 347

The bank shall notify the depositor with any matter or right related to the security which needs his approval or depends on his option; where the depositor's instructions are not received in due time the bank shall dispose of the right in a manner it deems beneficial to the depositor; who shall bear the costs and the usual commission.

ARTICLE 348

The bank must return the securities deposited with it on demand by the depositor with due attention for the time required for the preparation of such documents for return.

The return of securities shall be in the same place where the deposit took place and the bank shall return the same securities which were deposited unless an agreement or the law stipulates for the return of securities of the same kind or other securities.

ARTICLE 349

A security must be returned to the depositor, his successor or the authorized agent even when it contains something purporting that it is owned by a third party.

ARTICLE 350

Where a person claims that he owns the deposited securities, the bank shall send immediate notice to that effect to the depositor. If the depositor fails to acknowledge the same. the bank shall ask the claimant of ownership to refer his claim to the Court within such suitable time to be designated by the bank in order to obtain ruling on the securities. Where the claimant for ownership fails to present such court ruling within the prescribed time limit and if the depositor requires the recovery of the securities the bank shall return them to him after taking a photocopy thereof certified by the bank to be a true copy of the original; the photocopy shall be kept with the bank.

CHAPTER THREE LEASE OF SAFE DEPOSIT BOXES

ARTICLE 351

The lease of a safe deposit box is a contract by which a bank undertakes to place a certain specified safe deposit box at the disposal of a lessee to take advantage thereof against a fee.

ARTICLE 352

The key of the safe deposit box shall be delivered to the lessee and a duplicate key shall be kept by the bank; no other duplicate of the key may be delivered to any person other than the lessee and the bank.

The key handed over to the lessee shall remain the property of the bank and must be returned to it on expiry of the term of the lease.

ARTICLE 353

The bank may not permit any person other than the lessee or his agent to use the safe deposit box.

ARTICLE 354

The bank shall take precautions to secure the safety of the safe deposit box and safeguard the contents thereof.

ARTICLE 355

The lessee may not place in the safe deposit box such articles which may endanger its safety or that of the place where it Is located.

ARTICLE 356

Where the safe deposit box becomes threatened by a danger or it is revealed that it contains dangerous articles the bank must send immediate notice to the lessee requiring him to report to the bank to empty it to remove the dangerous articles there-from, where the lessee fails to report at the appointed time the bank may apply to the court for permission to open and empty the safe deposit box or to withdraw the dangerous articles there-from in the presence of the person appointed by the court for this purpose; a report of the event shall be made out stating the contents of the safe deposit box; where the danger is eminent the bank may on its own responsibility open and empty the safe deposit box or remove the dangerous articles there-from without sending the aforementioned notice or seeking the permission of the court.

ARTICLE 357

Where the lessee fails to pay the fee of the safe deposit box on the dates of maturity the bank may, after the lapse of fifteen days from the date of a notice sent to him requiring payment, consider the contract rescinded automatically; the bank shall recover the safe deposit box after sending notice to the lessee requiring him to report to open it and remove its contents.

Where the lessee fails to report on the date fixed the bank may petition the court requesting permission to open and remove the contents of the safe deposit box in the presence of a person to be appointed by the court; a report of the event shall be made out stating the contents of the safe deposit box; the court may decree that the contents be deposited with the bank or another depositary until an execution has been effected thereon.

ARTICLE 358

A notice sent to the lessee of the safe deposit box at the last domicile given to the bank shall be valid.

ARTICLE 359

The bank may withhold the contents of the safe deposit box and is vested with a priority right over the price resulted from their sale, for collection of the fee and the costs due to it.

ARTICLE 360

A provisional or executioner attachment may be effected on the safe deposit box.

The attachment is effected by serving upon the bank the contents of the document pursuant to which the attachment is being made and requiring it to state whether it has leased a safe deposit box to the distrainee. Immediately upon receipt of the service the bank shall bar the lessee from using the safe deposit box.

The bank shall forthwith inform the lessee that an attachment has been effected on the safe deposit box.

Where the attachment is provisional the lessee may apply to the court for permission to withdraw some of the contents of the safe deposit box.

Where the attachment is executioner the bank must open the safe deposit box and empty it in the presence of the distrainer and the execution officer; the lessee shall be informed with the date fixed for the opening of the safe deposit box; an inventory of the contents of the safe shall be made and delivered to the bank or the depositary appointed by the head of the Execution Department or any one acting for him until the sale is effected.

Where the safe deposit box contains papers or documents not covered by the forcible sale they must be delivered to the lessee and if he is not present at the time of opening the safe deposit box they must be handed over to the bank for safekeeping until they are claimed by the lessee or by his heirs.

ARTICLE 361

The bank may not in other than the cases stipulated in the law, open or empty the contents of the safe deposit box except with the permission and in the presence of the lessee or alternatively for enforcing a court order.

CHAPTER FOUR MORTGAGE OF FINANCIAL INSTRUMENTS AND OTHER COMMERCIAL (NEGOTIABLE) INSTRUMENTS

ARTICLE 362

The rules of movable commercial mortgage shall apply to the mortgage of financial securities and other negotiable instruments subject to the provisions of the following articles.

ARTICLE 363

Where the mortgagor has possession of documents mortgaged for a reason prior to the mortgage he shall be considered to have possession thereof in his capacity as mortgagor on the mere creation of the mortgage.

ARTICLE 364

Where the mortgaged documents have been given by other than the debtor the owner thereof shall not be bound to pay the debt which is the subject matter of the mortgage except in his capacity as a corporeal guarantor(13).

ARTICLE 365

A third party who has been appointed by both contracting parties to have custody of the mortgaged documents is considered to have abandoned every right to withhold them due to a cause preceding the mortgage unless he has reserved such right when he accepted custody of the mortgaged documents on behalf of the mortgagor.

[13] Caution reelle in French.

ARTICLE 366

Where the full value of the document had not been paid when it was presented for the mortgage, the debtor shall when called upon pay the outstanding part of the value at least two days before the date of its maturity, failing which the creditor may apply to the court for permission to sell the document and pay from the resultant of the sale that part of the value which remains unpid and keep the remainder as security for his right to the consideration of the mortgage.

ARTICLE 367

The degree of the mortgagor's security right shall remain valid in regard to the contracting parties and to third parties over the profits and interest of the mortgaged document as well as to the papers which are exchanged for it and its value where it had been paid prematurely.

CHAPTER FIVE BANKING ORDERS OF TRANSFER

ARTICLE 368

A banking order of transfer is an operation whereby a bank enters a certain specified sum in the debit side of the account of the applicant giving an order in writing for the transfer of such sum to be entered in the credit side of another account.

The following may be effected by such operation:

The transfer of a specified sum from the account of one person to another person's account every having an account in the same bank or in two different banks.

b. The transfer of a specified sum from one account to another, both of which are opened in the name of the person who has ordered the transfer, in the same bank or in two different banks.

The agreement between the bank and the applicant lays down the conditions for the issue of the order; however, the transfer order may not be to bearer.

ARTICLE 369

Where a banking transfer is ordered between two branches of a bank or between two different banks, any objection of a third party regarding the transfer must be presented to the branch or the bank having the beneficiary's account.

ARTICLE 370

The transfer order may involve sums actually existing in the account of the applicant or amounts agreed with the bank to be entered in his account within a certain specified period.

ARTICLE 371

It may be agreed that the beneficiary of a transfer order may hand it over to the bank instead of it being sent to the bank by the applicant.

ARTICLE 372

The beneficiary becomes the owner of the value of a banking transfer from the time it is entered in the debit account of the applicant. A transfer order may be revoked until the foregoing entry is made.

Where, however, it is agreed that the beneficiary shall himself hand over the order of transfer to the bank the applicant may not revoke it without prejudice to the provisions of article 377.

ARTICLE 373

The debt for the settlement of which the transfer order is made shall remain standing together with the security rights and annexes until the entry has been actually entered in the credit account of the beneficiary.

ARTICLE 374

It may be agreed to postpone the execution of certain specified transfer orders, whether they are sent directly by the applicant or are handed over to the beneficiary, to the end of the day to be executed with other orders of the same kind which may be presented to the bank on the same day.

ARTICLE 375

Where the provision for payment is less than the value stated in the payment order and if the order has been made directly by the applicant, the bank may refuse to execute the order provided it notifies the applicant accordingly without delay.

Where the transfer order is handed over by the beneficiary, the bank shall enter in his account the partial provision unless the beneficiary refuses. The bank must make an earmarking on the transfer order mentioning the entry of the partial provision or the rejection made by the beneficiary.

Where the bank refuses to comply with the order or the beneficiary refuses to accept the partial provision as mentioned in the two preceding paragraphs, the applicant remains entitled to dispose of the partial provision.

ARTICLE 376

Where the bank fails to execute the transfer order on the first working day which followed the day of presentment, the order shall be null and void up to the amount which was not executed and hence it must be returned to the presenter against receipt. Where a longer period than the foregoing has been agreed the unexecuted transfer order shall be added to such orders which are presented on the following days.

ARTICLE 377

Where the beneficiary is adjudged bankrupt the applicant may object to the execution of the transfer order even though the beneficiary has received it himself.

The declaration of the bankruptcy of the applicant shall not prevent the execution of the transfer orders issued by him if they have been received by the bank prior to the entering of the judgment of bankruptcy save where the court decrees otherwise.

CHAPTER SIX SIMPLE CREDITS AND DOCUMENTARY CREDITS

SECTION ONE SIMPLE CREDITS

ARTICLE 378

A non-documentary credit [simple credit] is a contract by which a bank places at the disposal of the beneficiary means of payment up to a certain specified sum.

A credit is opened for a specified or unspecified term.

ARTICLE 379

A credit opened for an unspecified term may be cancelled by the bank at any time provided that the beneficiary shall be informed at least ten days before the date set for the cancellation.

Any agreement which vests on the bank a right to cancel an unspecified term credit without having to send the said notice or to send notice at a lesser time limit than specified in the preceding paragraph shall be null and void.

In all cases any unused credit which is opened for an unspecified term shall be deemed to have been cancelled by the lapse of six months from the date when the beneficiary is notified of the opening of the credit.

ARTICLE 380

The bank may not cancel a credit before the expiry of its specified term except if the beneficiary is deceased, interdicted or suspends payments, even though a judgment declaring him bankrupt is not yet entered, or when he commits a gross fault in using the credit opened in his name.

SECTION TWO DOCUMENTARY CREDITS

ARTICLE 381

A documentary credit is a contract by which a bank undertakes to open a credit upon request of a customer (the applicant) in favor of another person (the beneficiary) against documents representing goods transported or ready for transport.

A documentary credit contract is independent of the contract which occasioned the opening of the credit and the bank remains a stranger of the latter contract.

ARTICLE 382

The bank which opened a credit must perform the conditions of payment, acceptance and discount which have been agreed in the credit contract if the documents conform to the stipulations and conditions contained in said contract.

ARTICLE 383

A documentary credit may be revocable or irrevocable.

A documentary credit is irrevocable unless it is agreed that it is revocable.

ARTICLE 384

1. A revocable documentary credit does not create any obligation on the bank towards the beneficiary; the bank may at any time amend or cancel it of its own accord or at the request of the applicant.

2. Where the shipping documents are presented during the validity of the credit prior to the cancellation of the credit and are in conformity with the particulars and conditions of the credit contract, the bank as well as the applicant shall be responsible to pay the beneficiary.

ARTICLE 385

The bank's obligation in an irrevocable documentary credit shall be absolute and direct towards the beneficiary and any bona fide holder of the document drawn for the performance of the contract underlying the opening of the credit.

An irrevocable documentary credit may neither be cancelled nor amended except by the agreement of all the parties concerned.

ARTICLE 386

An irrevocable documentary credit may be confirmed by another bank which in turn becomes obliged absolutely and directly towards the beneficiary.

A mere notification of the opening of an irrevocable documentary credit sent to the beneficiary through another bank shall not be considered confirmation by such other bank of the credit.

ARTICLE 387

The bank shall verify that the documents are in conformity with instructions of the applicant.

Where the bank rejects the documents it shall forthwith send notice of the rejection to the applicant giving reasons(14).

ARTICLE 388

The bank shall not be liable where the documents appear to be in conformity with the instructions received from the applicant.

The bank shall not bear any obligation relating to the goods in which respect the credit was opened.

[14] It seems to me that this notification should be sent to the beneficiary, otherwise keeping the documents without notice of rejection shall be interpreted to be acceptance of them. It is better to make notice to both the beneficiary and the applicant, because the applicant may waive his right of rejection against some discripancies. [The Author]

ARTICLE 389

A documentary credit is neither assignable nor divisible unless the bank which opened it is authorized to pay all or part thereof to a person or a number of persons other than the first beneficiary upon request from the beneficiary(15). An assignment is not effected unless it is approved by the bank. Unless otherwise agreed one assignment only is permissible.

ARTICLE 390

1. Where the applicant for the documentary credit fails to pay the value of the shipping documents which conform to the conditions of the opening of the credit within six months of the date of being informed of the arrival of said documents the bank may sell the goods by public auction after notifying the date and place of the sale to the applicant. No award of the sale may be made if the last offer does not amount to four-fifths of the documentary value of the goods and the costs; where said amount is not reached, a second auction shall be held and the goods shall be sold upon the last offer submitted in the auction.

2. The provisions of paragraph 1 shall not apply to credits opened by official or semi-official departments of the public sector companies; in such case the provisions of mortgage shall apply to the goods.

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[15] It seems to me that the transferability or divisibility of the sum of the documentary credit pertain to the applicant and not the beneficiary. [The Author]

CHAPTER SEVEN DISCOUNTS

ARTICLE 391

Discount is an agreement by which `a bank undertakes to pay in advance the value of a negotiable instrument or any other negotiable document to the beneficiary of the document in consideration for conveyance of its ownership to the bank, but the beneficiary remains bound to refund the value to the bank if the original debtor fails to pay.

The bank shall deduct from the amount paid to the beneficiary of the discount interest on the sum of the instrument or document and commission where stipulated.

ARTICLE 392

The interest shall be paid on the basis of the time which elapses up to the maturity of the document or on the basis of a shorter period in regard to mortgage and other operations which provide for an undertaking by the beneficiary of the discount to refund whatever sums he had cashed before the maturity date of the document.

Commission shall be estimated on the basis of the value of the document.

A minimum rate may be fixed for the interest and the commission.

ARTICLE 393

The beneficiary of a discount shall refund to the bank the face value of the document which was not paid.

ARTICLE 394

The bank shall have all the rights which are created by the document discounted vis-à-vis the principal debtor of the document, the beneficiary of the discount and the other debtors.

Furthermore the bank is vested, vis-à-vis the beneficiary of the discount, with a special right to recover the amounts placed at his disposal without deduction of such interest and commission which was received by the bank; the bank is vested with said right in regard to the unpaid documents regardless of the cause of refusal to pay.

CHAPTER EIGHT THE LETTER OF GUARANTEE

ARTICLE 395

A letter of guarantee is an undertaking issued by a bank upon request of a customer (the applicant) a certain specified or specifiable sum to another person (the beneficiary) unconditionally and without restrictions where this is required or if within the time limit stated in the letter. The letter of guarantee shall state the purpose for which it has been issued.

ARTICLEE 396

The bank may require the presentment of a personal security or a security in kind against the issue of a letter of guarantee.

The security may be an assignment of the right of the applicant towards the beneficiary.

ARTICLE 397

A beneficiary may not assign his right which arises from the letter of guarantee save with the bank's approval(16).

ARTICLE 398

The bank may not refuse payment to the beneficiary by reason of the bank's relation with the applicant or with the beneficiary or the applicant's relation with the beneficiary.

[16] The approval of the bank is not sufficient; the applicant is a party to this operation and his approval is essential. [The Author]

ARTCLE 399

The bank shall be discharged from liability towards the beneficiary where it does not receive a request from the beneficiary to pay during the validity of the letter of guarantee unless it has been agreed to extend the validity prior to expiry.

ARTICLE 400

Where the bank pays off the sum agreed in the letter of guarantee to the beneficiary it shall legally subrogate him in having recourse against the applicant for the sum so paid.

CHAPTER NINE CURRENT ACCOUNT

ARTICLE 401

A current account is a contract by which two persons agree to have entered in an account reciprocal and overlapping payments of debts which arise from operations effected between them, such as delivery of monies, property, commercial papers appropriated and others, and to replace the setoff of each payment of such debts separately, a total setoff resulting in the balance of the account on closing it.

ARTICLE 402

The contract of a current account shall have the following effects:

The ownership of the monies and property delivered and entered at the request of the owner in a current account shall pass to the party who received them.

A request existing prior to the contract of a current account shall be deemed to have been renewed when it has been entered in the current account by agreement of both parties. The rules of prescription and interest which would have run prior to entering the request in the current account shall not run on said request.

The entry of an instrument in the current account is valid provided its provision is not taken into account where it is not paid on the date of maturity, in which case it may be returned to the owner and the entry reversed as is stated in Article 414.

Individual entries in the current account, in their total, shall not be divisible before closure of the account and extraction of the balance.

No setoff may be made between one item in the current account and another in the same account.

Individual entries in the current account shall not cause the forfeiture of the rights of both parties relative to the contracts and transactions from which such individual entries have arisen save where otherwise agreed.

Each party to a current account may at any time dispose of his credit balance except where otherwise agreed.

ARTICLE 403

Payments into a current account do not produce interest unless it is agreed otherwise. Interest shall be calculated according to the rate agreed or that established by custom provided it does not exceed the limit set down in the civil law for the legal rate of interest.

(as amended by law No.23/1972 promulgated in official gazette No. 2115); No interest on the interests shall be calculated save where the current account is between a bank and another person; when computing the interest on interests in this case consideration shall be had as of the time limits fixed by the bank for entering them in the account as long as the account remains open.

ARTICLE 404

All debts arising from business relations effected by both parties to the account shall be entered by the operation of law in the current account save when such debts were secured by legal or contractual security rights or where it had been agreed to exclude the debts from the account.

Debts accompanied by contractual security rights whether established by the debtor or by a third party may be entered in the current account where all the interested parties have agreed expressly to do so,

ARTICLE 405

Where it is agreed to enter a debt accompanied with a contractual security right in the current account said security shall be transferred to guarantee the balance of the account on closure without regard to such changes to the account which may occur during its operation save where otherwise agreed.

Where the law stipulates that certain measures must be taken to give effect or to render the security right opposable against a third party neither the transfer to the balance nor the opposability against a third party may be exercised except from the date of completion of such measures.

ARTICLE 406

Where the individual entries of the current account contain cash debts valued in various currencies or non-fungible articles; both parties may agree to have them entered in the account provided that they are entered in separate columns where consideration shall be had of the similarity of payments contained therein and provided both parties declare that the account remain united in spite of the plurality of entries.

The balances of the above columns must be transferable so that at the time fixed by both parties or at the latest on closure of the account a set-off may be made in regard thereof in order to extract one single balance.

ARTICLE 407

Where a term has been fixed for the closure of an account it must be closed at the expiry of said period; it may, however, be closed prematurely by agreement of both parties.

Where a term has not been fixed for the closure of a current account it may be closed at any time at the discretion of either party with due consideration of the time limits agreed or those which are customary.

In all cases an account is closed by the death, insolvency, declaration of bankruptcy or interdiction of either party.

ARTICLE 408

Where an account has been opened between a bank and another person it shall be deemed to be closed at the end of the financial year of the bank; such closure shall not be deemed to be a final shut-down of the account, and the balance will be carried forward to the same account and its movement is resumed on the following day.

ARTICLE 409

Where an account is finally shut the debt of the balance shall be immediately maturing unless the parties have agreed otherwise. Where certain operations must be entered into the account but are still being transacted and when entered tend to amend the sum of the balance, in such case the debt of the balance is deemed as maturing from the day following the last entry resulting from said operations.

ARTICLE 410

The general rules shall apply to the prescription of the debt of the balance and interest. Legal interest shall run on the debt of the balance from the date of the closure of the account save where otherwise agreed.

ARTICLE 411

Where a debt entered in the account is eliminated or its sum reduced due to a cause subsequent to its inclusion in the account the entry must be cancelled or reduced (as the case may be) and the account adjusted accordingly.

ARTICLE 412

The creditor to either party to a current account may levy attachment on such sum of the credit balance of the debtor which is owing to him from a third party at the time of effecting the attachment.

ARTICLE 413

Where either party to the account is adjudged bankrupt a mortgage emanates on the properties of the bankrupt after the date set by the court for suspension of payments to guarantee the probable debt of the balance and may not be subject to setoff against the creditor's assembly.

The mortgage may be setoff against the creditor's assembly in regard to the difference, if any, between the sum of the debit balance on the date of establishing the mortgage and the sum of the balance on closure of the account, unless it is proved that the contracting party was, on the date of establishing the debt, aware that the debtor has suspended payments.

ARTICLE 414

Where the resultant account of a negotiable instrument is entered into the current account the person who discounted the instrument may where the value thereof has not been paid on the maturity date, cancel the entry by a counter entry, even where the person who presented it for discount has been declared bankrupt.

A counter entry means entering a sum equal to the value of the negotiable instrument plus the amounts stipulated in article 481 in the debit side of the current account.

A counter entry may not be made except in regard to negotiable instruments the value of which would not have been paid on the date of maturity; any agreement otherwise shall be null and void.

ARTICLE 415

A lawsuit to rectify the current account is inadmissible even where the claim is based on an error, inadvertence or repetition of the entry, in regard to entries made more than five previous years unless during such period a notice had been sent by either party to the other requesting rectification of the account, or where, in the case of an account opened with a bank, the customer proves that he has not during that time received the statement of account.

No case related to a current account may be heard after the lapse of five years, which runs from the date of closure of the account.

END OF LAW OF BANKING

IN IRAQ

IV

CODE OF COMMERCE OF

KUWAIT

LAW NO. 68 OF 1980

CANCELLING THE LAW OF COMMERCE NO. 2 OF 1971

PART 7

BANKING OPERATIONS

CHAPTER ONE MONEY DEPOSIT

ARTICLE 329

A bank deposit is a contract by which a bank acquires a right to own, and to dispose of the money deposited, within aspects agreeable to its professional activity; and by which it shall return a sum similar to the deposit in the same currency.

ARTICLE 330

The bank shall open an account in which it registers the operations between the bank and the depositor, or between the bank and third parties for the sake of the depositor.

The account shall receive all operations unless the parties agree otherwise.

ARTICLE 331

The deposit contract does not give the depositor any right to withdraw amounts more than the sum of the deposit.

Where the bank effects operations the result of which is a debit balance the bank shall notify the depositor to settle his indebtedness.

ARTICLE 332

The deposit can be withdrawn upon request and the depositor has the right to dispose of it, unless otherwise agreed.

Withdrawal can be suspended upon a notice or on a certain date agreed upon.

ARTICLE 333

The bank shall send a statement of account at least once a year, unless custom or agreement otherwise indicates. The statement shall include a copy of the account and its balance after the last movement.

ARTICLE 334

Where the bank issues a saving book, the book shall bear the name of its owner. Deposits and withdrawals shall be entered in the saving book. The entries, signed by a bank official, shall be opposable in case of any difference between the bank and the customer. Any agreement to the contrary shall be null and void.

ARTICLE 335

Unless otherwise agreed, the deposits and withdrawals shall be effected in the branch of the bank where the account is open(17).

ARTICLE 336

Where the depositor has several accounts in one bank or in the same branch of a bank, each such account shall be deemed as being independent of the other unless otherwise agreed upon.

ARTICLE 337

A bank may open a joint account for two or more persons with equality among them, unless otherwise agreed and provided that the following provisions are complied with:

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[17] Saving accounts nowadays enjoy extreme flexibility in several aspects. The shape of a saving book is no longer used and it became very near to the simple accounts. Deposit and withdrawal can be effected in any branch of the bank, due to the electronic systems in banks. The difference appears in interest due, as it may be higher on saving accounts than simple accounts.

The joint account shall be opened by all its owners or by a person holding a power of attorney from the owners of the joint account duly authenticated by a competent authority. Withdrawals from such account shall be effected according to the agreement of the account owners.

Where the balance of a joint account's co-owner is seized, said seizure shall be valid on distrainee's share of the account balance as of the day on which the bank received the notice of seizure. In such a case, the bank shall suspend withdrawals from the joint account up to and equivalent to the seized share. The co-owners of the joint account or whoever represents them shall be informed of the seizure within no more than five days as of the date of levying same.

Where the bank is effecting a clearance between the various accounts of a co-owner of a joint account, it may not include such joint account in the clearance, except with the written consent of the other co-owners. Upon the death or interdiction of one of the co-owners of a joint account, the other co-owners must give notice to the bank of that fact within no more than ten days of the date of death or loss of capacity. The bank shall thereupon suspend the withdrawal from the joint account from the date of notification until a successor is appointed.

CHAPTER TWO DEPOSIT OF FINANCIAL SECURITIES

ARTICLE 338

A bank may not use the financial securities deposited with it whether by disposing thereof, or exercising the rights derived there-from except for the sake of the depositor unless otherwise agreed upon.

ARTICLE 339

The bank shall exert in safekeeping the financial securities deposited the same care as a remunerated custodian; any agreement to vest immunity from liability to exert this care shall be null and void.

The bank may not abandon safekeeping of securities except for a justifying reason.

The depositor shall pay to the bank the fees agreed upon or current in custom in addition to the necessary expenses.

ARTICLE 340

The bank shall collect the profits, interest or value of the securities or for any reason unless otherwise agreed upon.

Sums collected shall be put under the disposition of the customer and entered into his account.

The bank shall effect any operation that may be necessary for the safekeeping of the rights related to the securities such as collecting gratuitous bonds or receiving them for replacement or for new profits.

ARTICLE 341

The bank shall keep the customer informed of every matter or right that may need his approval or may depend on his choice. If the instructions of the depositor were not received in due time the bank shall dispose of the matter as to draw benefit for the depositor. The depositor shall bear all the expenses in addition to the bank commission.

ARTICLE 342

The bank must return the financial securities deposited with it on demand of the depositor with due consideration to the time needed for preparation of the securities for such return.

The return shall be in the same place where the deposit was effected; the bank must return the same securities which had been deposited and not securities of the same kind with different numbers, unless both parties agreed thereon or the law permits the return of fungibles.

ARTICLE 343

The return of the financial securities must be to the depositor in person, to a proxy with private mandate or his heirs as the case may be, even when the security contains indication that it is owed by a third party.

ARTICLE 344

Where a lawsuit is brought on the maturity of the securities deposited with the bank, the bank shall send notice directly to the depositor accordingly and abstain from returning the securities to him until the action is decided by the judicial authorities.

CHAPTER THREE LEASE OF SAFE DEPOSIT BOX

ARTICLE 345

Rental of safe deposit boxes is a contract pursuant to which the bank undertakes to pose a certain specified safe deposit box at the disposal of its customer, to be used for a certain specified period against a fixed remuneration.

ARTICLE 346

The bank shall keep the leased safe deposit box and insure its fitness for use and shall not be exempted from liability except for a 'cause etrangere'.

ARTICLE 347

The bank shall deliver to the customer, and not to any body else, the key of the safe box, and may keep a copy for itself. The key shall belong to the bank and shall be returned to the bank at the end of the lease term.

The bank may not permit the opening of the safe box except for the customer and his authorized mandate.

ARTICLE 348

The customer may not sublease the safe box to a third party,save as otherwise agreed

ARTICLE 349

Where a safe box is leased to several persons, everyone of them shall have the right to use the safe box, unless otherwise agreed.

In case of death of the lessee or the lessees the bank may not allow any access to the safe box unless all those interested are present or by an order from the Court of First Instance.

ARTICLE 350

The lessee may not put in the safe box anything that nay threaten the safety of the box or the place in which it exists.

ARTICLE 351

Where the lessee fails to pay the box rental the bank may, after the lapse of fifteen days from the date of a notice served upon, the contract shall be considered as automatically rescinded, without need to a court decision.

ARTICLE 352

Where the term of the contract ends or is considered rescinded as stated in the previous article the bank recovers the box, after sending notice to the lessee that he must report to the bank, open the box, and empty its contents and deliver its key. The notice shall be valid if sent to the last address specified by the lessee to the bank.

Where the lessee fails to report on the date set or if the contract term expires, the bank may, after serving the notice on him, apply to the chairman of the court of first instance in whose jurisdiction the bank is located, for permission to open the safe deposit box and empty it in the presence of an execution officer who shall prepare a report of the facts, listing down the contents and it shall be signed by the Court delegate and the bank.

The bank shall keep the contents of the safe. After six months the bank can apply to the chairman of the court to order the sale of the contents, its deposit with the treasurer of the court, or to take any other appropriate measure.

The bank shall have a right of privilege on the sums found in the safe or the proceeds of sale of such contents and may satisfy itself as to the rental and other dues.

ARTICLE 353

Seizure or attachment may be levied on the safe box.

The attachment is effected by serving upon the bank the contents of the document pursuant to which the attachment is being made and requiring it to state whether it has leased a safe deposit box to the distrainee. If there is a safe leased to the customer the bank shall have a copy of the process--verbal and immediately upon receipt of the service the bank shall bar the lessee from using the safe deposit box. The bank shall forthwith inform the lessee that an attachment has been effected on the safe deposit box.

Where the attachment is provisional the lessee may apply to the court to lift the attachment or for permission to withdraw some of the contents of the safe deposit box.

Where the attachment is executioner the execution officer shall summon the lessee to attend the opening of the deposit box and empty it in the presence of the distrainer and the execution officer; the safe shall be open forcibly, the distrainer shall pay the expenses of opening and amending the safe box, an inventory of the contents of the safe shall be made and delivered to the bank or the depositary appointed by the head of the Execution Department or any one acting for him, and the contents shall be sold in accordance with the provisions of the law of procedures.

Where the lessee is absent and the safe deposit box contains papers or documents they must be delivered to the bank for safekeeping,, the bank shall put them in a sealed envelop duly stamped by the bank and the execution officer.

The distrainer shall pay to the bank a sum that covers the rental of the safe during the period of attachment.

BANK TRANSFERS FROM ACCOUNT TO ACCOUNT

[VIREMENT]

ARTICLE 354

A banking order of transfer is an operation whereby a bank enters a certain specified sum in the debit side of the account of the applicant giving an order in writing for the transfer of such sum to be entered in the credit side of another account.

The following may be effected by such operation:

The transfer of a specified sum from the account of one person to another person's account each having an account in the same bank or in two different banks.

The transfer of a specified sum from one account to another both of which are opened in the name of the person who has ordered the transfer, in the same bank or in two different banks.

The agreement between the bank and the applicant lays down the conditions for the issue of the order; however, the transfer order may not be to bearer.

ARTICLE 355

Where a banking transfer is effected between two branches of a bank or between two different banks any objection of a third party regarding the transfer must be notified to the branch or the bank having the beneficiary's account.

ARTICLE 356

The transfer order may involve sums actually existing in the account of the applicant or amounts agreed with the bank to be entered in his account within a certain specified period.

ARTICLE 357

It may be agreed that the beneficiary of a transfer order may hand it over to the bank instead of sending it by the applicant.

ARTICLE 358

The beneficiary becomes the owner of the value of a banking transfer from the time it is entered in the credit side of his account. A transfer order may be revoked until the foregoing entry is made.

Where, however, it is agreed that the beneficiary shall himself hand over the order of transfer to the bank the applicant may not revoke it, without prejudice to the provisions of article 363.

ARTICLE 359

The debt for the settlement of which the transfer order is made shall remain standing together with the security rights and annexes until the entry has been actually entered in the credit account of the beneficiary.

ARTICLE 360

Where the provision for payment is less than the value stated in the payment order and if the order has been made directly by the applicant, the bank may refuse to execute the order provided it notifies the applicant accordingly without delay.

Where the transfer order is handed over by the beneficiary, the bank shall enter in his account the partial provision unless the beneficiary refuses. The bank must make an earmarking on the transfer order mentioning the entry of the partial provision or the rejection made by the beneficiary.

Where the bank refuses to comply with the order or the beneficiary refuses to accept the partial provision as mentioned in the two preceding paragraphs, the applicant remains entitled to dispose of the partial provision.

ARTICLE 361

Where several beneficiaries submit to the bank their transfer orders, and their debts were more than the balance of the applicant's account, the beneficiaries have the right to request the bank to distribute the deficient balance among them in pari passu their debts.

ARTICLE 362

The distribution provided for in the previous article does not apply except for transfer orders submitted on the previous working day, In such case the provisions of the two first paragraphs of article 360 shall apply.

ARTICLE 363

Where the beneficiary is adjudged bankrupt the applicant may object to the execution of the transfer order even though the beneficiary has received it himself.

The declaration of the bankruptcy of the applicant shall not prevent the execution of the transfer orders issued by him where they have been received by the bank prior to the entering of the judgment of bankruptcy save where the court decrees otherwise.

OPENING OF CREDITS

CHAPTER FIVE SIMPLE CREDITS

ARTICLE 364

A simple credit is a contract by which a bank places at the disposal of the beneficiary means of payment up to a certain specified sum.

A credit is opened for a specified or unspecified term.

ARTICLE 365

A credit opened for an unspecified term may be cancelled by the bank at any time provided that the beneficiary shall be informed at least ten days before the date set for the cancellation.

Any agreement which vests on the bank a right to cancel an unspecified term credit without having to send the said notice or to send notice at a lesser time limit than specified in the preceding paragraph shall be null and void.

ARTICLE 366

The bank may not cancel a credit before the expiry of its specified term except if the beneficiary is deceased, interdicted or suspends payments, even though a judgment declaring him bankrupt is not yet entered, or when he commits a gross fault in using the credit opened in his name.

CHAPTER SIX DOCUMENTARY CREDITS

ARTICLE 367

A documentary credit is a contract by which a bank undertakes to open a credit upon request of a customer (the applicant) in favor of another person (the beneficiary) against documents representing goods transported or ready for transport.

A documentary credit contract is independent of the contract which occasioned the opening of the credit and the bank remains a stranger of the latter contract.

ARTICLE 368

The applicant and the bank which opened a credit must define precisely in the application of a documentary credit, its confirmation or communication, the documents required for payment, acceptance or discount.

ARTICLE 369

The opening bank shall implement the conditions of payment, acceptance or discount so long as the documents conform with the stipulations of the credit.

ARTICLE 370

A documentary credit may be revocable or irrevocable.

A documentary credit is irrevocable unless it is agreed that it is revocable.

ARTICLE 371

A revocable documentary credit does not create any obligation on the bank towards the beneficiary; the bank may at any time amend or cancel it of its own accord or at the request of the applicant provided that the amendment or cancellation must be effected in good faith and in a suitable time.

ARTICLE 372

The obligation of the bank in an irrevocable documentary credit shall be absolute and direct towards the beneficiary and any bona fide holder of the document drawn for the performance of the contract underlying the opening of the credit.

An irrevocable documentary credit may neither be cancelled nor amended except by the agreement of all the parties concerned.

An irrevocable documentary credit may be confirmed by another bank which in turn becomes obliged absolutely and directly towards the beneficiary.

A mere notification of the opening of an irrevocable documentary credit sent to the beneficiary through another bank shall not be considered to be confirmation of the credit by such other bank.

ARTICLE 373

Each irrevocable documentary credit shall bear a time limit for its validity and for the submission of documents for payment or acceptance or discount.

If the maturity date of the credit came on a closing day in banks, the maturity extends to the first following working day.

In other than the case of closing days in banks no extension of validity may occur in any case because of a force majeure in the issuing bank unless there is approval from the applicant.

ARTICLE 374

The bank shall verify that the documents are in conformity with instructions of the applicant.

Where the bank rejects the documents it shall forthwith send notice of the rejection to the applicant giving reasons(18).

ARTICLE 375

The bank shall not be liable where the documents appear on their face to be in conformity with the instructions received from the applicant.

The bank shall not bear any liability relating to the goods in which respect the credit was opened, its identity, its quantity, its weight, its apparent case. its packaging, its value or the implementation of obligations of expeditors or insurers.

ARTICLE 376

A documentary credit is neither assignable nor divisible unless the bank which opened it is authorized to pay all or part thereof to a person or a number of persons other than the first beneficiary upon request from the beneficiary.

An assignment is not effected unless it is approved by the bank. Unless otherwise agreed one assignment only is permissible.

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[18] It seems to me that this notification should be sent, also, to the beneficiary, as the UCP of the ICC provides; otherwise keeping the documents without notice of rejection shall be interpreted to be acceptance of them. It is better to make notice to both the beneficiary and the applicant, because the applicant may waive his right of rejection against some discripancies. [The Author]

ARTICLE 377

Where the applicant for the documentary credit fails to pay the value of the shipping documents which conform to the conditions of the opening of the credit within three months of the date of being informed of the arrival of said documents the bank may sell the goods in accordance with the provisions of the sale of mortgaged commercial goods.

CHAPTER SEVEN DISCOUNT

ARTICLE 378

Discount is a contract pursuant to which a bank undertakes to pay in advance the value of a commercial paper to the beneficiary in consideration of transferring the ownership of the paper to the bank. The bank shall deduct from the sum paid to the beneficiary of the discount interest on the paper's amount plus a commission. The beneficiary rests obliged to return the sum paid to him in case the initial debtor does not pay at maturity.

ARTICLEE 379

Interest is calculated on the time which elapses from the date the commercial paper is presented for discount until its maturity date, unless otherwise agreed upon.

Commission shall be estimated on the basis of the value of the commercial paper.

ARTICLE 380

The beneficiary of the discount shall return to the bank the nominal value of the unpaid paper.

ARTICLE 381

The bank shall have against the principal debtor, the beneficiary and all other debtors, all rights emanating from the discounted paper.

The bank shall have vis-à-vis the beneficiary of the discount an independent right to recover the sum it has placed at his disposal without deducting such interest and commission which were received by the bank; the bank has such rights as to the unpaid papers whatever may be the cause of non payment. .

Where the value of the paper is paid in the current account, the bank may reserve to itself the right to make a counter entry of the entry in accordance with article 403 of this law and shall inform the beneficiary of this counter entry.

BANK LETTERS OF GUARANTEE

ARTICLE 382

A bank guarantee is an undertaking issued by a bank, upon request from one of its customers (the applicant), to pay to another person (the beneficiary) a defined or undefined amount of money without any reserve or contestation if requested by the beneficiary during the term of this letter of guarantee. The letter shall define the purpose for which it has been issued.

ARTICLE 383

The bank may stipulate a cover to issue the letter of guarantee.

The cover may be a waiver of the beneficiary's right towards the beneficiary.

ARTICLE 384

The beneficiary may not waive his right upon the letter of guarantee to a third party except with the approval of the issuing bank.

ARTICLE 385

The bank may not refuse to pay to the beneficiary for grounds of the relation of the bank with the applicant or the relation of the applicant with the beneficiary.

ARTICLE 386

The bank is discharged from paying the value of the letter of guarantee if it did not receive a request for payment from the beneficiary during the period of validity of the letter of guarantee; unless such period has been renewed.

ARTICLE 387

Where the bank pays to the beneficiary the value of the letter of guarantee it shall subrogate the beneficiary towards the applicant within the paid value.

CURRENT ACCOUNTS

ARTICLE 388

A current account is a contract by which two persons agree that the rights and debts arising from their mutual and overlapping relations, such as delivery of money or funds, or otherwise, are converted into entries to be made in the account, and instead of setting off such entries, clearance shall be effected, such that the final balance resulting upon the closure of the account shall alone constitute a debt.

ARTICLE 389

An overdraft is permissible for the two parties, or to one of them. In the latter case one party may not be obliged to pay funds to the other unless the other has sufficient balance.

ARTICLE 390

Where the payments in current account are in cash and valued in different currencies or if these are non-fungibles, the parties may agree to enter it in the current account under separate sections, with due care to the similarity of the items, and that the parties shall accept the unity of the account despite the numerous sections it contains.

The balance of each separate section shall be convertible from one currency to the other in a manner that at the time agreed, or at the most on the closure of the account, it becomes possible to make a setoff and extract one sole balance.

ARTICLE 391

The entries credited in the current account shall be the property of who received them.

A party to the current account may dispose of his credit balance.

ARTICLE 392

The value of a negotiable instrument entered into the current account provided that it shall be returned to the beneficiary in case of non payment, it can be returned to the beneficiary in accordance with the provisions of article 403 of this law.

ARTICLE 393

All debts which arise from such business relations as are effected between both parties to the current account, shall, by the force of law, be entered in said account, save where such debts are secured by legal or contractual security rights.

However, debts secured by contractual security rights whether they have been established by the debtor or by a third party, may be entered in the current account subject to the approval of all parties. In such case the security shall remain securing the balance of the current account, within the value of the secured debt unless the parties agree otherwise.

ARTICLE 394

If it has been agreed to enter debts secured by contractual securities in the current account, such security right shall be deemed to guarantee the balance of the current account, disregarding any change in the movement of said account, unless otherwise agreed.

If the said security right is subject to certain formalities, the right is not deemed to secure the balance except from the moment these formalities have been accompalished.

ARTICLE 395

Where debts arise on one party are entered in the current account, it shall lose its independence and identity and may not be subject to payment, set off or limitation.

ARTICLE 396

The entering of items in the current account shall not extinguish the rights of either party emanating from the underlying contracts and transactions from which such items resulted.

ARTICLE 397

Payments into current account may not avail of interest unless otherwise agreed. If interest is not agreed it shall be the same rate as is customary.

Current accounts in banks may be granted compound interest during the life-time of the account. Compound interest may not be granted except three months after the entry has been made.

ARTICLE 398

All items of the current account as a whole are indivisible before the closure of the account and the extraction of the final balance. The closure is solely establishing the whole Clearance for all items of the account.

However, a debtor of one party has the right to levy seizure during the period of the current account to seize the credit balance of the account of his debtor at the time of effecting such seizure. In such case, the other party shall effect a temporary balance to find the position of the distrainee on the day of effecting seizure.

If it has been agreed to prevent the distrainee to dispose of his credit balance, the seizure blocks only the final balance of the account which appears in his favor at the time of closing the account.

ARTICLE 399

Where the current account is open for an agreed term, it shall be closed by the end of such term; and it can be closed before its term by common agreement of the parties.

If no term is agreed upon, the current account can be closed at any time by either party, provided that the prior notice agreed upon has been observed, otherwise the customary notice period shall be observed.

In all cases the current account shall be closed by the death of a party; being declared bankrupt, or interdicted.

The parties may agree to suspense the account temporarily to find the position of each party on agreed intervals or customary intervals or every three months.

ARTICLE 400

On the closure of the account the balance resulting becomes callable, unless it is otherwise agreed upon, or some operations which must be included in the account were not yet completed and its inscription ought to change the balance of the account.

ARTICLE 401

The general rules of limitation shall apply on the limitation of the balance of the current account and its interest rates. Legal interest rates shall run on the credit balance of the current account as from the date of closing the account, unless otherwise agreed upon.

ARTICLE 402

If the quantum of the debt entered into the current account increases or decreases for a reason subsequent to its inscription in the account, the other party shall delete the entry and the current account shall be amended accordingly

ARTICLE 403

Where the resulting amount of the discount of a negotiable instrument is entered in the current account and was not paid on the date of maturity, the person discounting the instrument shall be entitled to cancel the entry of its value into the current account by a counter entry even though the person who presented it for discount has been declared bankrupt.

A counter entry means the entry of a sum equal to the sum of the negotiable instrument in addition to the expenses in the debit side of the current account.

No entry ir counter entry may be made except in regard to such unpaid negotiable instruments on the date of maturity. Any agreement to the contrary shall be null and void.

ARTICLE 404

Any claim brought for the rectification of a current account for error, omission or repetition of items shall not be acceptable after the lapse of more than six months as of the date of receipt of the statement of interruption of the account, which shall be sent by registered dispatch accompanied with acknowledgement of receipt.

In all cases said claim shall prescribe by the lapse of five consecutive years for any claim concerning the current account; and this period shall run as of the date of closure of the current account.

VI

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CHAPTER SIX BANKING OPERATIONSMONEY DEPOSIT

ARTICLE 339

A money deposit is a contract that confers to the bank ownership of the money deposited and to dispose thereof in its professional trade; provided that it shall be obliged to return the deposit upon request from the depositor and that it be returned in its same currency.

ARTICLE 340

The bank shall open an account for the deposit to inscribe in it the operations effected between the bank and the depositor or with a third party for the account of the depositor. The bank may exclude operations which it agrees with the depositor to exclude from the account.

ARTICLE 341

The contract of money deposit does not permit the depositor to withdraw sums exceeding the deposit. If the deposit account is overdrawn, the bank shall inform the depositor immediately to cover his position.

ARTICLE 342

A money deposit is to be returned upon request. Unless otherwise agreed. The depositor has the right to dispose of the balance partially or totally. Recovery may be suspended on giving prior notice or on the lapse of a term.

ARTICLE 343

The bank shall send a statement of account every year to the depositor unless the law or a rule of custom provides otherwise. The statement shall include a copy of the account and the balance after the last entry.

ARTICLE 344

Where a bank issues a saving book, it shall be in the name of the person in whose favor it has been issued and ahall include the credit and debit items. The entries in such book, if signed by an official in the bank shall be a valid proof in the relationship of the bank and the customer, and any agreement to the contrary shall be void.

ARTICLE 345

Payments and withdrawals shall occur in the premises of the bank unless otherwise agreed.

ARTICLE 346

Where there are several accounts in the name of a single person in one bank or in a branch of a single bank each account shall be considered separate from the others.

ARTICLE 347

A bank may open a joint account for two or more persons with equal shares, unless otherwise agreed, and with due care to the following provisions:

The application to open a joint account shall be signed by all its parties or by a person having an authenticated mandate from them, and the agreement of the parties shall be observed in each withdrawal, unless otherwise agreed upon.

Where an attachment is effected on one of the joint account parties, the attachment shall apply to the share of the seized party and the bank shall refrain from honoring any dealing upon the share of the attached party. The bank shall notify the other parties to the joint account of the attachment during a period of five days.

Where the bank effects setoff among accounts owned by one of the parties to the joint account, the bank may not setoff the joint account unless the other owners of the joint account approve this setoff.

Where a party to a joint account dies or becomes incapacitated, the other parties shall accordingly notify the bank with the event during ten days at the most from the date of death or incapacitation and that they wish to continue dealing with the remaining parties, The bank shall prevent all withdrawals from the said account within the value of the share if the dead or incapacitated person until the heirs are defined or the curator of the incapacitated is appointed.

THE DEPOSIT OF SECURITIES

ARTICLE 348

The bank may not use the deposited securities except in the favor of the depositor, unless otherwise agreed upon.

ARTICLE 349

In the custody of deposited securities the bank shall exert the care of a remunerated custodian. Any agreement to the contrary shall be void. Nevertheless, the bank may not be liable for the destruction caused by force majeure. The bank shall not waive the possession of securities except for a justifying reason. The depositor shall pay the rent fixed either by agreement or by custom, in addition to the necessary expenses.

ARTICLE 350

The bank is responsible to collect the returns, profits, value of the security or any other dues for any reason unless otherwise agreed. Such sums shall be under the disposal of the depositor and added to his account. The bank shall effect any operation necessary for the preservation of the security and the related rights, such as the receipt of bonus shares, replacement documents or the addition of new extra rights.

ARTICLE 351

The bank shall notify the deposutor of any matter or right connected with the securities and depends upon his approval or choice. If the depositor does not answer, the bank shall proceed to dispose in favor of the depositor and the latter shall pay for the expenses and the commission of the bank.

ARTICLE 352

As soon as the depositor requests to receive the securities, the bank shall return them to him with due care to the time needed to prepare the securities for delivery. The delivery of securities shall be in the place in which they were deposited, and the securities deposited shall be returned themselves, unless it has been else agreed or the law provides that securities of the same nature or of other kind are to be delivered.

ARTICLE 353

The securities shall be delivered to the depositor or to his successors or to whom they may appoint even if the securities are owned by a third party.

ARTICLE 354

If a third party alleges the ownership of the securities, the bank shall immediately notify the depositor; and shall not deliver the securities to him until the dispute ends either by agreement or by the court. The third party shall initiate a lawsuit during thirty days from the date of his allegation; otherwise his allegation is considered non-existing.

RENTAL OF SAFE DEPOSIT BOXES

ARTICLE 355

Rental of a safe deposit box is a contract pursuant to which the bank undertakes, against rental, to pose a certain specified safe deposit box at the disposal of his customer, to be used for a certain specified period.

ARTICLE 356

The bank rests responsible for the safety of the box and its custody and its fitness for use the bank cannot discharge its liability except by proving a cause etrangere.

ARTICLE 357

The bank shall deliver to the lessee customer the key of the safe deposit box and keep a copy for itself. The key rests owned to the bank and shall be returned at the end of the lease. The bank may not give a duplicate of the key to any other person or to the authorized agent of the lessee.. The bank is not entitled to open the safe box unless it gets permission from the lessee and in his presence; and may not empty it except in the presence of the lessee or by a court order.

ARTICLE 358

The lessee may not re-lease the safe box or a part thereof or waive his right upon it to a third party, unless otherwise agreed upon.

ARTICLE 359

Where the safe is leased to several persons each of them shall have the right to use it solely unless otherwise agreed.

In case the lessee or one of the lessees is dead the bank may not, as of the date it knew of the death, permit the opening of the safe box except by the approval of all those concerned or by a court decision.

ARTICLE 360

The lessee is prohibited from putting dangerous objects in the safe box. If the safety of the box is threatened or the bank finds that the safe box contains dangerous objects the bank shall notify the lessee to attend; if the lessee does not attend the bank shall apply to the competent judge to issue an ex party order to open the safe box in a certain date in the presence of a person appointed by the judge and the lessee, to vacate the box or to withdraw the dangerous objects from it, and a proces-verbal shall be drawn to identify the contents, If the danger is eminent the bank, under its responsibility may open the safe box and vacate it or withdraw the dangerous objects without notification to the lessee or order from the judge.

ARTICLE 361

Where the lessee fails to pay the box rental on the due dates, the bank may, after the lapse of fifteen days, from the date of a notice served upon him requiring payment, consider the contract as automatically rescinded without need to a court order.

ARTICLE 362

Where the period of the contract ends or the contract is considered rescinded in accordance with the previous article, the bank may recover the safe deposit box after sending notice to the lessee, which shall be valid if addressed to his last known address, requiring him to report to open it and remove its contents. Where the lessee fails to report on the date fixed in the notice, the bank can apply to the President of the court requesting permission to open and remove the contents of the safe deposit box in the presence of an official appointed by the court; a report of the event shall be drawn and signed by the bank and the appointed official stating the contents of the safe deposit box. The contents shall be deposited with the bank. The bank may, after the lapse of six months apply to the court to order the sale of the contents of the safe and to deposit the proceeds of sale in the safe of the court, or to decree any appropriate measure. The bank shall have priority over the money deposited in the safe box and the proceeds of sale to satisfy its rental and costs.

ARTICLE 363

Attachment effected on safe boxes is permissible.

Attachment requires the bank to report if it has leased a safe deposit box to the distrainee; and if so the bank shall prevent the distrainee from any access to the place of the safe. A copy of the proces-verbal of the attachment shall be delivered to the bank and summons thereof shall be served upon the distrainee. The details justifying the attachment shall be included in the documents.

If the attachment is precautionary, the lessee can apply to the court to lift the attachment, or to allow him to recover some of the contents of the safe.

If the attachment is executioner, the execution official shall, after having summoned the lessee, proceed to open the safe box by force; and the distrainer should have deposited the costs of forcible opening and of reparation of the safe. The contents of the safe shall be sold as directed by the court.

If the distrainee is absent and the safe contained documents and deeds the bank shall envelop it and put the seals of the bank and the court.

The creditor effecting attachment shall deposit with the bank a sum sufficient to cover the expenses of the phase of execution.

BANKING TRANSFERS (VIREMENT)

ARTICLE 364

A banking order of transfer is an operation whereby a bank enters a certain specified sum in the debit side of the account of the applicant giving an order in writing for the transfer of such sum to be entered in the credit side of another account.

The following may be effected by such operation:

The transfer of a specified sum from the account of one person to another person's account each having an account in the same bank or in two different banks.

The transfer of a specified sum from one account to another both of which are opened in the name of the person who has ordered the transfer, in the same bank or in two different banks.

The agreement between the applicant and the bank shall regulate the terms and conditions of the transfer, and the order may not be to the order of bearer.

If it is agreed that the beneficiary of the transfer shall retransfer it to the account of a third party, the name of the third party must be stated in the order of the applicant.

ARTICLE 365

Where the transfer is effected between two different branches or two different banks, any objection to the transfer from a third party, shall be submitted to the branch or the bank in which the beneficiary's account exists.

ARTICLE 366

The order of transfer may relate to amounts existing in the applicant's account; or relate to amounts the applicant agrees with the bank to add to his account.

ARTICLE 367

It may be agreed that the beneficiary may deliver the order of the applicant to the bank in person instead of notifying it by the applicant.

ARTICLE 368

The beneficiary shall own the transfer by mere registration in the credit side of his account. The applicant may cancel his order before the registry in the beneficiary's account. If it is agreed that the beneficiary shall submit the order to the bank the beneficiary shall not be entitled anymore to cancel it, without prejudice to the provisions of article 373 of this law.

ARTICLE 369

The debt in payment of which the transfer order has been made, shall remain existing with its securities and accessories until the transfer has been actually registered in his account.

ARTICLE 370

It is lawful to agree to delay the registration of the transfer made by the applicant or delivered to the beneficiary to submit it directly to the bank; until the end of the day in order that it can be registered with other transfers of the same type effected on the same day.

ARTICLE 371

Where several beneficiaries apply to the bank at a time, and the balance of the applicant is insufficient, the beneficiaries can request to be proportionally satisfied of their debts.

ARTICLE 372

The distribution referred to in the previous article may not be effected except on the day following the presentation of the beneficiaries. In such case paras.2 and 3 of article 370 shall apply.

ARTICLE 373

If the beneficiary has been declared bankrupt the applicant can object the payment of the order even if the beneficiary has received the order of transfer.

The bankruptcy of the applicant does not prevent payment of transfer orders if they had been submitted to the bank before the day of rendering the judgment declaring him bankrupt; unless the court had otherwise decided.

SECTION 5 OPENING OF CREDITS

ARTICLE 374

A simple credit is a contract by virtue of which a bank places at the disposal of the beneficiary means of payment up to a certain specified sum. A simple credit may be opened for a specified term or unspecified term.

ARTICLE 375

A credit opened for an unspecified term may be cancelled by the bank at any time provided that the beneficiary shall be informed at least ten days before the date set for the cancellation. Any agreement providing for cancellation without prior notice or for cancellation in a period less than ten days shall be void.

ARTICLE 376

The bank may not terminate the credit before its specified term, except if the beneficiary is deceased or interdicted or ceased to pay his creditors, even though a bankruptcy is not declared, or commits a gross default in using the credit opened in his favor.

SECTION SIX DOCUMENTARY CREDIT

ARTICLE 377

A documentary credit is a contract by which a bank undertakes to open a credit upon request of a customer (the applicant) in favor of another person (the beneficiary) against documents representing goods transported or ready for transport.

A documentary credit contract is independent from the contract which occasioned the opening of the credit and the bank remains a stranger from the latter contract.

ARTICLE 378

The request to open a documentary credit shall precisely state the terms of opening, confirmation or notification, upon which the credit shall be implemented in regard of payment, acceptance or discount.

ARTICLE 379

The bank which opened a credit must perform the conditions of payment, acceptance or discount agreed upon in the contract of credit if the documents satisfy the terms and conditions stated in the contract of credit. .

ARTICLE 380

A documentary credit may be revocable or irrevocable. It must be indicated in the credit whether it is revocable or not. If not clear it shall be revocable.

ARTICLE 381

A revocable documentary credit does not create any obligation on the bank towards the beneficiary. The bank may at any time amend or cancel it of its own accord or at the request of the applicant, provided that the revocation occurs in good faith and in a suitable time.

ARTOCLE 382

The irrevocable documentary credit shall be direct and binding upon the bank towards the beneficiary and any bona fide bearer to whom the rights are transferred.

It is not allowed to cancel an irrevocable documentary credit or to amend it except by approval of all those concerned in it. The letter of credit can be confirmed by a bank other than the issuing bank; the notification of a bank other than the issuing bank is not tantamount confirmation of the letter of credit.

ARTICLE 383

An irrevocable credit must contain the maximum date for its validity for payment, acceptance or discount. If the maturity date coincides with a bank holiday, the maturity shall be shifted to the first working day following the holiday. Any other interruption may not ensue extension of dates even if a force majeure event, unless the applicant has given an express approval to extend.

ARTICLE 384

The bank shall verify that the documents received are in conformity with instructions of the applicant. Where the bank rejects the documents it shall forthwith send notice of the rejection to the applicant giving reasons(19).

ARTICLE 385

The bank shall not be liable where the documents appear on their face to be in conformity with the instructions received from the applicant. The bank shall not bear any obligation relating to the goods in respect of which the credit was opened, as to its identification, its quantity, its weight, its outside condition, its packaging, its value, or the implementation of the obligations of insurers and expeditors. .

ARTICLE 386

A documentary credit is neither assignable nor divisible unless the bank which opened it is authorized to pay all or part thereof to a person or a number of persons other than the first beneficiary upon request from the beneficiary. An assignment is not effected unless it is approved by the bank. Unless otherwise agreed, the assignment shall be effected to all assignees at one time only, unless otherwise agreed upon.

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[19] The notification should be sent, also, to the beneficiary, otherwise keeping the documents without notice of rejection to the beneficiary, shall be interpreted to be acceptance of them. It is better to make notice to both the beneficiary and the applicant, because the applicant may waive his right of rejection against some descripancies. [Note of the Author].

ARTICLE 387

Where the applicant for the documentary credit fails to pay the value of the shipping documents which conform to the conditions of the opening of the credit within three months of the date of being informed of the arrival of said documents, the bank may proceed to a sale of the goods in accordance with the instructions of the Court.

CHAPTER 7 DISCOUNT

ARTICLE 388

Discount is an agreement by which a bank undertakes to pay in advance the value of a negotiable instrument to the beneficiary therein, less the commission and interest, in consideration for conveyance of its ownership to the bank but the beneficiary remains bound to refund its nominal value to the bank if the principal debtor fails to pay.

ARTICLE 389

The interest shall be paid on the basis of the time which elapses up to the maturity of the instrument. The commission shall be based on the value of the instrument. The commission may have a minimum charge. The balances of these sections shall be convertible in order for it to be converted at the time of the closure or at the time determined by the parties of the account to extract a sole balance.

.ARTICLE 390

The beneficiary of a discount shall refund to the bank the face value of the document which was not paid.

ARTICLE 391

The bank shall have all the rights emanating from the discounted document vis-à-vis the principal debtor of the document, the beneficiary of the discount and the other debtors. Furthermore the bank is vested, vis-à-vis the beneficiary of the discount, the principal debtor and all other debtors in the instrument, with a special right of recovery of the amounts placed at his disposal without deduction of such interest

and commission which was received by the bank; the bank is vested with said right in regard to the unpaid documents regardless of the cause of refusal to pay. If the amounts are entered into a current account, the operation shall be cancelled by a counter entry [contre passation] in line with article 413 of this law and inform the beneficiary accordingly.

SECTION 8 LETTERS OF GURANTEE

ARTICLE 392

A letter of guarantee is a written undertaking issued by a bank upon request of a customer (the applicant) to pay upon request a certain specified or specifiable sum to another person (the beneficiary) without any condition or charge until the end of the period of its validity. The letter shall specify the reason of its issuance.

ARTICLE 393

The bank may require the presentment of a security against the issue of the letter of guarantee. The security may be an assignment of the right of the applicant towards the beneficiary.

ARTICLE 394

A beneficiary may not assign his right which arises from the letter of guarantee save with the bank's approval.

ARTICLE 395

The bank may not refuse payment to the beneficiary by a reason relating to its relationship with the applicant or the relationship between the applicant and the beneficiary.

ARTICLE 396

The bank shall be discharged from liability towards the beneficiary by the lapse of the term of the letter of guarantee unless it has been agreed to extend the validity prior to expiry.

ARTICLE 397

Where the bank pays the sum of the letter of guarantee, it shall be entitled to subrogate the beneficiary towards the applicant.

SECTION 10 CURRENT ACOUNTS

ARTICLE 398

A current account is a contract by which two persons agree that the rights and debts arising from operations reciprocated between them, whether it may be money, funds or negotiable papers, are converted into entries to be made in the account, and clearance of which may not be effected one by one but the final balance shall result upon the closure of the account.

ARTICLE 399

A current account may have an overdraft balance in favor of either party or in favor of one party. In the latter case the party holding the account may not present funds to the other party except if the account shows sufficient credit balance.

ARTICLE 400

Where the payments in current account are in cash and valued in different currencies or if these are non-fungibles, the parties may agree to enter it in the current account under separate sections, with due care to the similarity of the items, and provided that the parties shall accept the unity of the account despite the numerous sections it contains. The balance of each separate section shall be convertible from one currency to the other in a manner that at the time agreed, or at the most on the closure of the account, it becomes possible to make a setoff and extract one sole balance.

ARTICLE 401

Money and funds deposited in the current account are appropriated to the receiving party. Nevertheless each party shall have the right to dispose of a credit balance appearing in the account at any time; unless agreed otherwise.

ARTICLE 402

The discount of a negotiable instrument may be entered in the current account; but if the value thereof has not been paid on the date of maturity, the entry in the current account shall be reversed by a counter entry and the instrument shall be returned to the person who presented it.

ARTICLE 403

All debts which arise from such business relations as are effected between both parties to the current account, shall be, by the force of law, entered in said account, save where such debts are secured by legal or contractual security rights.

ARTICLE 404

Debts secured by contractual security rights whether they have been established by the debtor or by a third party, may be entered in the current account, despite of changes occurring in the account, unless agreed otherwise. In such case the security shall remain securing the balance of the current account, within the value of the secured debt. If the law provides for measures for the conclusion of the security or its opposability against third parties, the security cannot be invoked as established or opposable except by the accomplishment of these measures and from that date.

ARTICLE 405

Once a debt is entered in the current account it loses its entity and its characteristics and becomes a mere item in the account, and it becomes unfit for payment, prescription or set off.

ARTICLE 406

The entering of items in the current account shall not extinguish the rights of either party emanating from the underlying contracts and transactions from which such items resulted, unless otherwise agreed upon.

ARTICLE 407

Payments in current accounts may not avail of interest unless otherwise agreed. If the interest rate is not agreed upon it shall be defined as customary. In current accounts with banks interest may be granted while the account is open.

ARTICLE 408

All items of the current account are indivisible before the closure of the account and the extraction of the final balance. Clearance may not be effected between an individual item in a current account and another item in the same account.

The creditor of a party of the current account is allowed to effect an attachment during the operation of the account. In such case the bank shall make a temporary position of the account to find out if at the time of effecting the attachment it was debit or credit. In case it has been agreed that the customer is prevented from disposing of the balance during the conduction of the account, the attachment shall include the credit balance appearing in favor of the distrainee at the time of closure.

ARTICLE 409

Where the current account is open for an agreed term, it shall be closed by the end of such term; and it can be closed before its term by common agreement of the parties. If no term is agreed upon, the current account can be closed at any time by either party, provided that the prior notice agreed upon has been observed, otherwise the customary notice period shall have been observed. In all cases the current account shall be closed by the death of a party; being declared bankrupt, or insolvent or interdicted. It may be agreed upon to suspend a current account during its conduction to find out the position of either party on intervals defined by the parties or by custom, or by the end of every three months.

ARTICLE 410

At the time of closure of the current account the balance should be extracted and it becomes due, unless otherwise agreed; and of some operations are still running and the balance shall be changed by the result of such operations.

ARTICLE 411

The limitation of the balance and its interest shall be governed by the general rules of limitation. The interest accrues as of the day following the closure of the account unless otherwise agreed upon.

ARTICLE 412

If a debt in the current account extinguishes or is decreased for a reason subsequent to its entry, this item shall be deleted or amended and the current account shall accordingly be changed (20).

[B] Banks in Egypt use the French term : contre passation.

ARTICLE 413

Where the proceeds of discount of a negotiable instrument had been inscribed in the current account and thereafter was not paid at maturity, the party who effected the discount of the instrument, even if the other party has been declared bankrupt, becomes entitled to cancel and reverse the entry; which means to inscribe the same sum of the paper in the debit side of the account together with the costs and interest as of the maturity date. Reversal may not be used except for unpaid instruments at maturity; and any agreement to the contrary shall be null and void.

ARTICLE 414

Any action brought for the rectification of a current account for error, omission or repetition of items is not acceptable by the lapse of six months during which the other party did not receive a statement of the account sent by registered mail with acknowledgement of receipt. In all cases the action prescribes by the lapse of five years as of the date the right to bring a lawsuit of rectification has become established.

QATAR

THE CODE OF COMMERCE

OF QATAR

LAW NO.27 OF 2006

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CHAPTER SIX BANKING OPERATIONS

SECTION ONE BANK CASH DEPOSIT

ARTICLE 344

Bank cash deposit is a contract by which a bank or an authorized entity receives money and has the right to dispose thereof subject to a commitment to return an identical sum to the depositor in accordance with the contract. The money shall be returned in the same kind of currency.

ARTICLE 345

The bank shall open an account for each deposit, and shall inscribe in it all operations effected between the bank and the depositor or between the bank and a third party for the account of the depositor and upon his instructions.

ARTICLE 346

The deposit account does not allow the depositor to withdraw amounts in excess of the initial deposit. In case of operations effected by the bank for the account of a depositor and resulting in a debit balance owed to the bank, the bank shall immediately advise the depositor to settle his position.

ARTICLE 347

Unless otherwise agreed upon, a deposit of money must be returned immediately upon demand. The depositor may at any time dispose of the balance or a part thereof. In case the depositor is deceased, the deposit shall continue with the same conditions unless the heirs request its recovery before the end of its term.

ARTICLE 348

The bank shall send at least one statement of account every month to the depositor, unless an agreement or usage indicates otherwise. The statement shall contain a copy of the account showing its balance carried forward after the last movement.

ARTICLE 449

Credit or debit dealings shall be effected in the same bank or the sane branch in which the account the account has been open, unless it is otherwise agreed upon, or the system of business in the bank permits otherwise. .

ARTICLE 450

Where a customer has several accounts in the same bank or in several branches, each such account shall be considered separate from the others, unless otherwise agreed upon.

ARTICLE 351

A bank may open a joint account for two or more persons with equal shares, unless otherwise agreed; and the following provisions shall be observed:

The application to open a joint account shall be signed by all its parties or by a mandate carrying an authenticated proxy from them.

Withdrawal shall be effected by all parties together, or by each party separately; or it may be agreed upon a maximum limit for each individual withdrawal,

Where an attachment is effected on one of the joint account parties, the attachment shall apply to the share of the distrainee on the day the attachment has been served upon the bank and the bank shall refrain from honoring any dealing upon the share of the attached party. The bank shall notify the other parties to the joint account or their legal attorney of the attachment during a period of five days.

If the bank is going to effect setoff among several accounts pertaining to one of the parties to a joint account, the bank may not extend the setoff to the joint account except with the written approval of the other parties in the joint account.

Where a party to a joint account dies or becomes incapacitated, the other parties shall accordingly notify the bank with the event and that they wish to continue dealing with the remaining parties or to close the joint account; during ten days at the most from the date of death or incapacitation The bank shall prevent all withdrawals from the share of the deceased or the incapacitated person until the heirs are defined or the curator of the incapacitated is appointed.

FINANCIAL SECURITIES DEPOSI

ARTICLE 352

The financial securities deposit is a contract by which a bank or an authorized establishment receives as deposit financial securities for safekeeping and effecting the financial rights related thereto for the account of the depositor against or without remuneration.

ARTICLE 353

The bank may not use the rights related to a financial security deposit for itself, unless agreed otherwise. The bank may not release the financial securities except for a reason justifying it.

ARTICLE 354

In safekeeping the financial securities deposited with a bank, it shall exercise such care as is exercised by a remunerated depository and to take all precautions implied by the banking custom. Any agreement which exonerates the bank from such liability shall be null and void.

The bank shall be responsible for the destruction of the financial securities or its theft, unless it occurred by force majeure.

The depositor shall pay the fees agreed upon or defined by custom in addition to the necessary expenses.

ARTICLE 355

The bank shall collect the profits or revenues of the security; and its value if appropriate or became amortized; as well as any other amount related to the security unless otherwise agreed upon. Such proceeds shall be deposited in the depositor's account.

The bank shall effect all operations necessary for the related rights of the security paid without consideration, such as replacement, or receipt of gratuitous shares or adding new profits thereto.

ARTICLE 356

The bank is required to inform the depositor with all matters related to his securities or depends on his approval or his choice; if the depositor does not respond in due time, the bank shall take all necessary measures in favor of the deposiyor; and the depositor shall be bound to bear the expenses and the commissions.

ARTICLE 357

The bank shall deliver the financial securities to the depositor on demand. The delivery shall be effected in the place where it has been deposited or in any other place as agreed. The financial securities shall be returned in the same kind unless otherwise agreed by the parties or if the law provides for the receipt of fungibles.

ARTICLE 358

The securities shall be delivered to the depositor or his proxy with a special mandate or to his successors even if the securities indicate that its ownership is to a third party.

ARTICLE 359

If a claim is initiated alleging the ownership of the securities, the bank shall immediately notify the depositor; and shall not deliver the securities to him until the end of the dispute.

ARTICLE 360

The bank is entitled to the right of retention upon the financial securities deposited in order to satisfy itself of all its rights towards the depositor.

ARTICLE 361

If the bank falls bankrupt, the depositor shall be entitled to recover his financial securities so long as it has a distinct identity.

SAFE DEPOSIT BOXES

ARTICLE 362

The lease of a safe deposit box is a contract pursuant to which the bank undertakes, against rental, to pose a certain specified safe deposit box, in its premises, at the disposal of a customer, for use during a certain specified period.

ARTICLE 363

The bank shall take all appropriate measures towards preparing the safe deposit box for use and shall be liable for its safety and fitness for use. The bank shall not negate its liability except if it proved the existence of a cause etrangere.

ARTICLE 364

The safe deposit box should be opened with two keys, one of which should be handed in by the bank to the customer lessee and the other shall be kept with the bank and at the end of the term of the lease the lessee shall return the key to the bank. It may be appropriate to introduce another system provided that it realizes the security of the system of double keys. The bank may not allow any other person to have access to the place of the box; and shall ascertain of the identity of the lessee. The bank shall keep a register in which it mentions the times of each opening.

ARTICLE 365

The lessee is prevented from re-leasing the safe deposit box or to waive his right to third parties, unless otherwise agreed upon.

ARTICLE 366

If the safe deposit box is leased to several persons each one of them has a right to use the safe box, unless otherwise agreed upon.

If the lessees or one of them is deceased, the bank, once it is notified with the event, shall prevent any access to the safe box until the agreement of all parties is obtained or a court decision is rendered.

ARTICLE 367

The lessee of a safe deposit box may not place therein articles detrimental to its safety or the safety of the place where it lies.

If the safety of the box is threatened or the bank finds that the safe box contains dangerous objects, the bank shall notify the lessee to attend in a certain time;

if the lessee does not attend the bank shall apply to the president of the court competent to issue an ex party order to open the safe box in a certain date in the presence of a person appointed by the court and the lessee, to vacate the box or to withdraw the dangerous objects from it, and a proces-verbal shall be drawn to identify the contents, If the danger is eminent the bank, under its responsibility shall open the safe box and vacate it or withdraw the dangerous objects without notification to the lessee or order from the court.

ARTICLE 368

Where the lessee fails to pay the box rental on the due dates, the bank may, after the lapse of ninety days, from the date of a notice served upon him requiring payment, consider the contract as automatically rescinded, without need to a court decision.

ARTICLE 369

Where the contract of lease ends, or is rescinded according to the previous article, the bank may, after serving the notice upon him, serve a notice upon the lessee, in his domicile notified to the bank, to open the safe deposit box and vacate it. If the lessee does not attend in the fixed time, the bank shall apply to the president of the court to give permission to open the safe box in the presence of one of the officials of execution to draw a process verbal with the contents of the box. The bank shall keep the contents of the safe, and by the lapse of six months can apply to the president of the court to order the sale of the contents and specify the procedures to be followed, or to order any other appropriate measure. The proceeds of sale shall be deposited in the safe of the court. The bank shall have a privilege over monies found in the safe deposit box, and upon the proceeds of sale to satisfy itself in regard of the rental and the expenses.

ARTICLE 370

A precautionary or executioner attachment may be remanded on the contents of the safe deposit box.

The attachment shall be remanded by notifying the bank with the deed by virtue of which such attachment is levied, and by requiring the bank to state whether it has leased a safe deposit box to the distrainee. A copy of the document of attachment is delivered to the bank and notified to the distainee. If the bank acknowledged the existence of a safe box it shall bar the distrainee from any access to the place of the safe box and the distrainee shall be notified without delay that attachment has been levied on the safe deposit box.

Where the attachment is precautionary, the lessee may request the judge either to lift the attachment or to give him permission to withdraw some of the contents of the safe.

Where the attachment is executioner, the execution officer shall, after serving a notice upon the distrainee with the date fixed for opening the safe box and after the distrainer has deposited with the court the expenses of forcible opening of the safe and re-amending it, shall be bound to open the safe deposit box, empty its contents. Inventory of the box contents shall be drawn up and the execution officer shall proceed to the sale of the contents as prescribed by the court. Where the lessee is absent and the safe deposit box contains papers or documents it shall be delivered to the bank, put in an envelop sealed by the seal of the execution officer and the bank. Five years after keeping the documents the bank may apply to the president of the court to order the appropriate measure.

SECTION FOUR BANK TRANSFERS
(Virement)

ARTICLE 371

A bank order of transfer is an operation whereby a bank enters a certain specified sum in the debit side of the account of the applicant giving an order in writing, or by electronic means, for the transfer of such sum to be entered in the credit side of another account. The following may be effected by such operation:

The transfer of a specified sum from the account of one person to another person's account each having an account in the same bank or in two different banks.

The transfer of a specified sum from one account to another both of which are opened in the name of the person who has ordered the transfer, in the same bank or in two different banks.

ARTICLE 372

The transfer order is effected by an order from the applicant to the bank in accordance with its agreement with the bank. The name of the beneficiary shall be stated in the order; and if the beneficiary is delegated to re-transfer the amount to a third party the name of such person shall be stated in the order of transfer.

ARTICLE 373

Where the transfer is effected between two different branches or two different banks, any objection to the transfer shall be submitted to the branch or the bank in which the beneficiary's account exists.

ARTICLE 374

The order of transfer may relate to amounts already existing in the applicant's account; or relate to amounts the applicant agrees before hand with the bank to add to his account.

ARTICLE 375

It may be agreed that the transferee shall submit the transfer order himself to the bank instead of being notified to him by the applicant.

ARTICLE 376

The beneficiary shall acquire the ownership of the transfer upon its registry in the credit side of his account. The applicant can cancel his order before the registry in the beneficiary's account.

Without prejudice to the provisions of bankruptcy of the applicant or the beneficiary if it has been agreed that the beneficiary shall submit himself the transfer order to the bank, the applicant may not cancel this order.

ARTICLE 377

The debt in which payment the transfer order has been made, shall remain existing with its securities and accessories until the transfer has been actually registered in his account.

ARTICLE 378

If the provision of the transfer is less than the sum of the transfer, and the order was submitted by the applicant, the bank shall be entitled to refuse to effect the transfer and it shall notify the applicant without delay. If the bank agrees to an overdraft, the excess shall be treated as a line of credit.

If the order is submitted directly by the beneficiary to the bank, the bank can effect the transfer within the less amount; and the beneficiary has the right to refuse it. The bank shall earmark the order with the transfer of the less amount or with the refusal of the beneficiary.

The applicant becomes entitled to dispose of the remaining balance upon the bank's registration of the less amount or the refusal of the beneficiary to accept this amount.

ARTICLE 379

If the beneficiary has been declared bankrupt the applicant can object the payment of the order even if the beneficiary has received the order of transfer.

The bankruptcy of the applicant does not prevent payment of transfer orders if they have been submitted to the bank before the day of rendering the judgment declaring him bankrupt.

SECTION FIVE   SIMPLE CREDITS

ARTICLE 380

The simple credit is a contract by virtue of which the bank will pose under the disposal of the beneficiary within a specified or unspecified period, certain means of payment in accordance with terms and conditions agreed upon.

ARTICLE 381

If the simple credit is open for a specified period the bank may not cancel it before its end, except in of death of the beneficiary, being incapacitated or does not settle his debts even if not declared bankrupt; or if he commits a gross negligence in the use of his account. If the beneficiary is a company, the bank may cancel the simple credit if it was adjudged null and void, or has extinguished for any reason.

ARTICLE 383

If the simple credit is open for unspecified period, the bank can cancel it provided that it shall notify the beneficiary at least fifteen days before its cancelation. Any agreement exempting from the notification or providing for a shorter period shall be null and void.

In all cases the simple credit is considered cancelled by the lapse of six months without using it by the beneficiary unless otherwise agreed upon.

ARTICLE 383

If the securities, whether personal or in rem, presented by the beneficiary became not enough to secure the debt, the bank may request additional security or diminish the line of credit granted in proportion with the debt. The beneficiary, after having settled a part of his indebtedness, may ask the bank to return partially the securities taken.

ARTICLE 384

It is forbidden to transfer the simple credit to a third party except with the approval of the opening bank.

ARTIICLE 385

The contract of opening a simple credit shall include the maximum limit to which the credit may reach.

SECTION SIX DOCUMENTARY CREDITS

ARTICLE 386

A documentary credit is a contract by which a bank undertakes to open a credit upon request of a customer (the applicant) in favor of another person (the beneficiary) against documents representing goods transported or ready for transport.

ARTICLE 387

A documentary credit contract is independent from the contract which occasioned the opening of the credit and the bank remains a stranger from the latter contract.

ARTICLE 388

The application and the letter of credit at the time of opening, confirmation or notification shall define the conditions of payment, acceptance and discount agreed in the credit contract.

ARTICLE389

The bank which opened a credit must perform the conditions of payment, acceptance and discount agreed in the credit contract if the documents conform to the stipulations and conditions contained in said contract.

ARTICLE 390

A documentary credit may be revocable or irrevocable. A documentary credit shall specify its kind, otherwise it shall be irrevocable.

ARTICLE 391

A revocable documentary credit does not create any obligation on the bank towards the beneficiary and the bank may at any time amend or cancel it of its own accord or at the request of the applicant. If the documents were presented in conformity with the letter of credit and during its validity without any cancellation or amendment, the bank and the applicant shall be jointly and severally obliged to perform the documentary credit.

ARTICLE 392

The irrevocable documentary credit shall be direct and binding upon the bank towards the beneficiary and any bona fide bearer to whom the rights are transferred. It is not permissible to cancel an irrevocable documentary credit except by approval of all those concerned in it.

ARTICLE 393

Each irrevocable documentary credit shall contain a maximum date for its validity to present documents. If the maximum date coincides a bank holiday, it shall be extended to the first following working day.

Extension of the date of validity for holidays may not extended to a ceasing of dealing as a bank, for forcing circumstances or any other reason, unless the bank has an express delegation from the applicant to extend it.

ARTICLE 394

The bank shall verify that the documents received are received and in conformity with the instructions of the applicant. The bank may not accept a substitute document even if it is complementary thereto.

ARTICLE 395

The bank shall not be liable where the documents appear on their face to be in conformity with the instructions received from the applicant.

The bank shall not bear any obligation relating to the goods in respect of its kind, description, quantity, weight, its apparent status, its value, its packaging, or the implementation of commitments by the dispatchers and insurers.

ARTICLE 396

A documentary credit is neither assignable nor divisible unless the bank which opened it is authorized to pay all or part thereof to a person or a number of persons other than the first beneficiary upon request from the beneficiary. An assignment is not effected unless it is approved by the bank. Unless otherwise agreed, the assignment shall be effected to all assignees at one time only, unless otherwise agreed upon.

ARTICLE 397

The applicant is not authorized to sequestrate, or effect seizure upon the amounts due to the beneficiary.

ARTICLE 398

The applicant shall be bound towards the bank to pay the sums paid by the bank to the beneficiary. He shall also pay the expenses incurred by the bank in this respect. If he fails to do, the bank shall be entitled to retain the documents until payment. If after a period of ninety days these amounts were not paid, the bank can proceed to the sale of the goods in conformity with the provisions of the sale of things commercially mortgaged.

ARTICLE 399

In all issues not provided for in these rules, the Uniform Customs and Practices of the documentary credits of the ICC shall be applicable.

SECTION SEVENDISCOUNT

ARTICLE 400

Discount is an agreement by which a bank undertakes to pay in advance the value of a negotiable instrument to the beneficiary therein, in consideration for conveyance of its ownership to the bank. The beneficiary remains bound to refund its nominal value to the bank if the original debtor fails to pay.

ARTICLE 401

The beneficiary of discount is entitled to request the recovery of his instrument before maturity, against returning the sum delivered to him.

The principal debtor may, with the approval of the bank, pre-pay the negotiable instrument before maturity.

ARTICLE 402

Shall be null and void all discounts effected upon unsafe instruments, such as accommodation and fictitious instruments.

ARTICLE 403

The beneficiary of discount shall pay the value of the insy=trumebt in case the principal debtor fails to pay it.

ARTICLE 404

The bank shall have all the rights emanating from the discounted document vis-à-vis the principal debtor of the document, the beneficiary of the discount and the other debtors. An agreement may be entered into to the effect that the bank delivers the negotiable instrument to the beneficiary to take the legal proceedings for its collection under his responsibility.

ARTICLE 405

Where the negotiable instrument is entered into the current account of the beneficiary, the bank is entitled, at the time of returning the document to the beneficiary or if the principal debtor fails to pay at maturity, the bank may cancel the entry of the operation by a counter entry (contre passation) and the beneficiary shall be accordingly notified.

SECTION EIGHT THE LETTER OF GUARANTEE

ARTICLE 406

A letter of guarantee is a written undertaking issued by a bank upon request of a customer (the applicant) to pay upon request a certain specified or specifiable sum to another person (the beneficiary) unconditionally and despite any contestation. The letter of guarantee shall state the purpose from its issuance.

ARTICLEE 407

The bank may require the presentment of a security against the issue of a letter of guarantee. The security may be an assignment in favor of the bank of the right of the applicant towards the beneficiary.

ARTICLE 408

A beneficiary may not assign his right which arises from the letter of guarantee save with the bank's approval. The bank must have prior approval from the applicant to such assignment.

ARTICLE 409

The bank may not refuse payment to the beneficiary by a reason relating to its relationship with the applicant or the relationship between the applicant and the beneficiary.

ARTICLE 410

It is not permissible to apply sequestration upon the letter of guarantee or to effect attachment upon it.

ARTICLE 411

The bank shall be discharged from liability towards the beneficiary where it does not receive a request from the beneficiary to pay, during the validity of the letter of guarantee unless it has been agreed between the bank and the applicant to extend the validity prior to expiry.

ARTICLE 412

Where the bank pays off the sum agreed in the letter of guarantee to the beneficiary it shall subrogate the beneficiary against the applicant for the sum so paid and its interest.

ARTICLE 413

Issues not provided for in this law shall be subject to the rules prevailing in international transactions in connection with letters of guarantee.

10. CURRENT ACCOUNTS

ARTICLE 414

A current account is a contract by which two persons agree that the rights and debts arising from their mutual relations are converted into entries to be made in the current account; clearance of which may not be effected successively but the final balance resulting upon the closure of the account shall alone constitute a callable debt.

ARTICLE 415

Where the payments in current account are in cash and valued in different currencies or if these are non-fungibles, the parties may agree to enter them in the current account under separate sections, with due care to the similarity of the items, and provided that the parties shall accept the unity of the account despite the numerous sections it contains.

The balance of each separate section shall be convertible from one currency to the other in a manner that at the time agreed, or at the most on the closure of the account, it becomes possible to make a setoff and extract one sole balance.

ARTICLE 416

The deposits in a current account should be undisputable, and the money or funds entered into the current account shall be owned by the party who received it. Each party has the right to dispose of his credit balance at any time unless otherwise agreed.

ARTICLE 417

A negotiable instrument entered into the current account is lawful, but if it is not paid at maturity it shall be returned and its inscription be cancelled.

ARTICLE 418

All debts that may arise from business relations as are effected between both parties to the current account, shall be entered in said account, save where such debts are secured by legal or contractual security rights. However, debts secured by contractual security rights whether they have been established by the debtor or by a third party, may be entered in the current account subject to the approval of all parties.

ARTICLE 419

In case of contractual or legal security the security shall remain securing the balance of the current account, within the value of the secured debt. Such security cannot be invoked against third parties unless it is publicized if the law stipulates it.

ARTICLE 420

Debts of one party entered in current account shall thereby lose its own identity and may not be subject to payment or setoff or limitation.

ARTICLE 421

The entering of items in the current account shall not extinguish the actions and rights of either party emanating from the underlying contracts and transactions from which such items resulted.

ARTICLE 422

All items of the current account are indivisible before the closure of the account and the extraction of the final balance. Clearance may not be effected between an individual item in a current account and another item in the same account. The final closure of the account is the sole manner to produce final balance of the account.

However, the creditor of either party in the current account is allowed to effect an attachment during the operation of the account. In such case the other party shall make a temporary position of the account to find out if at the time of effecting the attachment it was debit or credit. If it has been agreed to prevent the distrainee from the right to dispose of his credit balance, then the attachment shall be effected solely upon the balance at the time of closure.

ARTICLE 423

If there is a date defined for the closure of the account, it shall be closed at the time of closure. It may be closed before such date by consent parties. If there is no definition of its period either party may notify the other with a date of closure with due attention to the period of notice agreed upon or a customary period. In all cases the account is closed by the death of a party, or losing the capacity or being declared bankrupt or being insolvent, or incapacitated, or by losing the legal personality of a juristic person, or delisting off the bank or cessation of its business. The current account may be temporarily stopped to find the position of each party on agreed intervals or every three months.

ARTICLE 424

At the time of closing the current account the balance resulting shall be due unless agreed otherwise. If there exists some operations still running and the quantum of the balance will be affected by its result the balance shall be the balance appearing on the day following the last of these operations.

ARTICLE 425

The limitation of the final balance shall be governed by the general rules of limitation unless otherwise agreed.

ARTICLE 426

If an item in the current account has been changed for a reason subsequent to its inscription, the item must be cancelled by counter entry, or a settlement shall be made to rectify.

ARTICLE 427

Where the resulting amount of the discount of a negotiable instrument is entered in the current account but the value thereof is not paid on the date of maturity, the person discounting the bill may cancel the entry of its value into the current account by a counter entry even though the person who presented it for discount has been declared bankrupt. No counter entry may be made except in regard of negotiable instruments that have not been paid on the maturity date; any agreement to the contrary shall be null and void.

ARTICLE 428

Any action brought for the rectification of a current account for error, omission or repetition of items or any other corrections is not permissible by the lapse of one year, unless a fraud or gross negligence is evidenced on one of the parties. In all cases the action prescribes by the lapse of five years as of the date the right to bring a lawsuit of rectification has become established.

SECTION 10 CREDIT BY ACCEPTANCE

ARTICLE 429

Credit by acceptance is a contract by which a bank undertakes to accept a negotiable instrument drawn upon said bank by its customer or by a person appointed by him on the date of maturity of the instrument by adding its acceptance upon such instrument.

ARTICLE 430

The bank upon paying the instrument shall have the right to enter this payment in the customer's account and shall have the recourse on the customer in accordance with the provisions of the contract of credit by acceptance.

ARTICLE 431

Once the bank has accepted the instrument it may not seek to discharge itself raising exceptions related to the contract of credit by acceptance.

SECTION 11 CREDIT CARDS

ARTICLE 432

A credit card is a contract by which the customer seeks settlement of financial payments within certain limits to be paid by the issuing bank or by other entity on behalf of which the card has been issued.

ARTICLE 433

The regulation of the rights and obligations of the bank and the customer, emanating from the credit card shall be defined in accordance with the contract specifically the limits of credit or sums electronically withdrawn and the like, the period of validity of the card, the costs of the bank and the means of settlement.

ARTICLE 434

The bank shall be obliged to pay for the commodities and services resulting from the use of the credit card within the limits permitted for the customer. The bank's obligation towards third parties shall be final and it may not invoke exceptions related to the relationship of the bank and its customer.

SECTION 12 COLLECTION OF NEGOTIABLE INSTRUMENTS

ARTICLE 435

The bearer of a commercial instrument may sign a collection endorsement to the bank and thereby the bank becomes the mandate charged with the collection on his behalf.

ARTICLE 436

At the maturity date the bank shall submit the instrument to the debtor for collection. If the paper is paid the bank shall deposit the proceeds in the credit side of the customer's account. If the debtor fails to pay the bank shall serve summons of protest of non payment against the debtor and the expenses shall be charged to the account of the customer.

ARTICLE 437

The bank shall be liable for the default or omission in the implementation of the proxy.

ARTICLE 438

The endorsement for collection does not expire by the death of the customer or being interdicted.

SECTION THIRTEEN LOAN SECURED BY FINANCIAL SECURITIES

ARTICLE 439

Loans secured by financial securities are loans secured by mortgage. If the securities are nominative the mortgage shall be evidenced by earmarking the paper that it is delivered for mortgage and the mortgage shall be submitted to the entity of issuance to confirm. If the financial securities are to bearer it shall be considered as chattels and may be evidenced by all means of evidence.

ARTICLE 440

The possession of the securities transferred from the customer to the bank and the bank can keep them with a right of retention.

ARTICLE 441

The bank shall keep the securities in custody, by collecting its gains or receiving its value at maturity; and it shall deduct these amounts from the principal debt.

ARTICLE 442

If the debt of the bank is not paid, it can apply to the court requesting to order the sale of the securities by auction or in the market and it satisfies itself with priority over the creditors.

ARTICLE 443

If the securities mortgaged are owned by a person other than the debtor, such person is responsible only as a real surety.

ARTICLE 444

A third party appointed by the parties to take the securities in custody shall be considered waiving his right of mortgage, unless he reserves his mortgage at the time of the agreement of custody.

ARTICLE 445

If the value of the security is not paid in full, the debtor shall, two days prior to the date of the installment, pay it to the bank. In case the debtor fails to pay, the bank can apply to the court to order the sale of the security and it shall pay the installment and keep the remainder as security.

ARTICLE 446

The creditor keeps its rank as mortgagee between the parties and towards third parties, upon the gains, or substitute documents or the value of the security if paid before maturity.

END OF QATAR BANKING LAW

LAWS of BANKINg IN THE MIDDLE EAST

ARE; BAHRAIN; IRAQ; KUWAIT

OMAN; QATAR; UAE

VII

UNITED ARAB EMIRATES

BY

Mr. mohiedin I. Alamedin

THE CODE OF COMMERCE OF

THE UNITED ARAB EMIRATES

CHAPTER THREE BANKING OPERATIONS

THE CODE OF COMMERCE OF

THE UNITED ARAB EMIRATES

CHAPTER THREE

BANKING OPERATIONS

Introduction

The code of commerce of the United Arab Emirates is known as 'the law of commercial transactions'. It has been enacted by law No. 18/1993. It has a general scope of application over the seven Emirates.

THE AUTHOR

PART ONE BANK DEPOSITS AND ACCOUNTS

CHAPTER ONE BANK DEPOSITS

ARTICLE 371

Bank cash deposit is a contract by which a person delivers a sum of money by any means of payment to the bank which undertakes to return it upon request or according to conditions agreed upon.

The bank acquires the ownership of the money deposited, and shall be entitled to dispose of it for the needs of its own activity subject to a commitment to return an identical sum to the depositor in the same currency.

ARTICLE 372

Unless otherwise agreed upon, a deposit of money must be returned immediately upon demand. The depositor may at any time dispose of the balance or a part thereof.

This right may be made conditional upon serving a prior notice or upon the expiry of a certain time limit.

ARTICLE 373

Cash deposits, other than those intended for investment, shall be treated as debts and set off may be effected between cash deposits and a debt owed to the bank by the depositor. Any agreement to the contrary shall be null and void.

ARTICLE 374

Where the bank issues a saving deposit book, it must be in the name of the person in whose favor the book is issued. Deposits and withdrawals shall be entered therein, the particulars entered in the book and signed by the bank official, shall constitute an evidence for proving the said particulars, as between the bank and the person in whose favor the book was issued and any agreement to the contrary shall be null and void.

ARTICLE 375

Unless otherwise agreed, the deposits and withdrawals shall be effected in the branch of the bank where the account has been opened(21).

ARTICLE 376

Where the deposit has several accounts in one bank or in the same branch of a bank, each such account shall be deemed as being independent of the other unless otherwise agreed upon.

ARTICLE 377

In compliance with the provisions of article 391 hereof, the money deposit contract does not vest the depositor with the right to draw from the bank sums in excess of the sum deposited. Where the bank carries on operations which cause the depositor's balance to be indebted, the bank must forthwith inform the depositor thereof to adjust his situation.

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[21] Saving accounts nowadays enjoy extreme flexibility in seveal aspects. The shape of a saving book is no longer used and it became very near to the simple accounts. Deposit and withdrawal can be effected in any branch of the bank, due to the electronic systems in banks. The difference appears in interest due, as it may be higher on saving accounts than simple accounts.

ARTICLE 378

The bank is bound to send to the customer a statement of the balances of his accounts once every month, unless otherwise agreed.

ARTICLE 379

A bank may open a joint account for two or more persons with equality among them, unless otherwise agreed and provided that the following provisions are complied with:

The joint account shall be opened by all its owners or by one person holding a power of attorney from the owners of the joint account duly authenticated by an official specialized authority. Withdrawals from such account shall be effected according to the agreement of the account owners.

Where the balance of a joint account's co-owner is seized, said seizure shall be valid on distrainee's share of the account balance as of the day on which the bank received the notice of seizure. In such a case, the bank shall suspend withdrawals from the joint account up to and equivalent to the seized share. The co-owners of the joint account or whoever represents them shall be informed of the seizure within no more than five days as of the date of levying same.

Where the bank is effecting a clearance between the various accounts of a co-owner of a joint account, it may not include such joint account in the clearance, except with the written consent of the other co-owners.

Upon the death or interdiction of one of the co-owner of a joint account, the other co-owners must give notice to the bank of that fact within no more than ten days of the date of death or loss of capacity. The bank shall thereupon suspend the withdrawal from the joint account from the date of notification until a successor is appointed.

CHAPTER TWO BANK TRANSFERS

ARTICLE 380

A bank transfer is an operation pursuant to which a bank enters a specified sum in the debit side of the account of the applicant following a written order from him and adds it to the credit side of another account.

The following may be achieved through such operation:

The transfer of a specified sum from the account of one person to another person's account both of them have an account in the same bank or in two different banks.

The transfer of a specified sum from one account to another both of which are opened in the name of the person who has ordered the transfer, in the same bank or in two different banks.

The agreement between the bank and the customer ordering the transfer shall regulate the conditions of issue of the order; however, the order of transfer may not be made to bearer.

ARTICLE 382

Where the bank transfer is effected between two branches of the same bank or between two different banks, every objection emanating from third parties regarding this transfer must be addressed to the branch or the bank where the beneficiary's account is opened.

ARTICLE 393

It may be agreed that the beneficiary may hand over the transfer order in person to the bank where the account of the applicant is opened, rather than being notified to the said bank.

ARTIICLE 384

The beneficiary shall acquire ownership of the bank transfer value as of the time it is entered in the debit side of the applicant. The latter may delete the transfer order until the debit entry is made.

However, where it is agreed that the beneficiary shall hand over the transfer order to the bank in person, the applicant may not delete the transfer order in compliance with the provisions of article 389.

ARTICLE 385

The debt in settlement of which the transfer is made shall remain outstanding with its securities and supplements until the value has been actually entered in the credit side of the beneficiary's account.

ARTICLE 386

It may be agreed to postpone the implementation of specified transfer orders, whether they were sent directly by the applicant or handed over by the beneficiary, until the end of the day in order to have them executed with other orders of the same kind and presented to the bank on the same day.

ARTICLE 387

Where the transfer order is addressed directly by the applicant to the bank, the bank may, if the balance is less than the amount indicated in the transfer order, refuse to implement the order provided it shall notify such refusal without delay to the applicant.

But if the transfer order is handed over by the beneficiary, the bank shall effect the transfer to his account with the partial (insufficient) balance, unless the beneficiary refuses the same. The bank shall further indicate on the transfer order the crediting of the partial balance or the beneficiary's refusal of the transfer.

Where several beneficiaries hand over at a time their transfers and the value of the transfer orders held by them exceed the balance of the person ordering the transfer, they shall b entitled to require distribution of the insufficient balance among them, each according to his share.

Where the bank refuses to implement the transfer order or where the beneficiary refuses to accept the transfer of the partial balance in accordance with paragraphs (1) and (2) hereinabove the applicant shall have the right to dispose of such balance.

Where the bank fails to implement the transfer order on the first working day following the day it is presented, the order shall within the non-executed part, be considered as null and void and must be returned to the applicant against a receipt. Where an agreement is reached for a longer period, the transfer order which has not been implemented shall be added to the orders submitted on the following days.

ARTICLE 388

In case of death of the applicant, the bank shall as of the date on which it was informed of the death, cease the implementation of the transfer order issued by the deceased. Where the beneficiary dies, the bank shall carry out the implementation of the transfer order.

ARTICLE 389

Where the beneficiary is declared bankrupt, the applicant may suspend the implementation of the transfer even if the beneficiary has received the order himself.

The declaration of the bankruptcy of the applicant shall not bar the implementation of the transfer orders which had been submitted to the bank prior to the issue of bankruptcy declaration judgment, unless the court has decreed otherwise.

PART TWO CURRENT ACCOUNTS

ARTICLE 390

A current account is a contract between two persons pursuant to which the rights and debts arising from their mutual relation are converted into entries to be made in the account, clearance of which shall be effected such that the final balance resulting upon the closure of the account shall alone constitute a callable debt.

ARTICLE 391

A bank may open a current account for its customer where the operations carried out by said bank are coupled with the opening of a credit or granting of credit facilities in his favor.

It may be agreed that the account shall not be overdrawn from the side of the customer and shall keep continuously a credit balance. It may also be agreed that this account may be overdrawn from both sides, which means that it could have a debit or a credit balance in regard to either party.

ARTICLE 392

It is required, in order that payments may be entered in a current account, that they fulfill the following conditions:

That they be money or fungible articles of one kind so that clearance may be effected among them.

That they arise from debts which are established as to their existence and amount.

That they be delivered to the payee on basis of transfer of ownership.

ARTICLE 393

The two parties may keep several current accounts as long as each account is restricted to one specific kind of operations or currencies.

ARTICLE 394

A contract of current account shall result in the following:

Ownership of the properties and monies delivered and entered in the current account shall be transferred to the party who is intended to receive them.

The entry of a negotiable instrument in the current account is deemed to be valid subject to payment on the maturity date. If unpaid it shall be returned to its owner and a counter entry is made in the manner stipulated in paragraph 2 of article 407.

The totality of the items of the current account is indivisible before closure of the account and extraction of the final balance.

Clearance may not be effected between an individual item in a current account and another item in the same account

The entering of items in the current account shall not extinguish the rights of either party emanating from the underlying contracts and transactions from which such items resulted.

Save where otherwise agreed upon every party to a current account may at any time dispose of his credit balance.

ARTICLE 395

All debts which arise from such business relations as are effected between both parties to the current account, shall by operation of the law be entered in said account save where such debts are secured by legal or contractual security rights.

However, debts secured by contractual security rights whether they have been established by the debtor or a third party, may be entered in the current account, where all the concerned parties have expressly agreed on such measure.

ARTICLEE 396

Where it has been agreed to enter a debt secured by a contractual security right in the current account, such security passes to guarantee the balance of the account on closure within the limit of the amount of the debt, without regard to any changes which may occur to the account during the course of operation, save where otherwise agreed upon.

Where the law provides for certain specified measures for concluding the security right or for being used as evidence against third parties, such security right shall not pass to guarantee the current account balance, and may not be opposable against third parties except from the date of carrying out the said measures.

ARTICLE 397

Where the debts due to either party are entered in the current account they shall lose their special characteristics and independent existence and shall neither thereafter be susceptible to settlement separately, to clearance, to being sued or to prescription by time limitation.

ARTICLE 398

Where the entries in a current account contain cash debts evaluated in various currencies or non-fungible articles, both parties may agree to have them entered in the current account, provided they are entered under separate sections with due regard to similarity of the payments represented thereby and provided also that both parties agree that the account shall maintain its unity in spite of its several sections.

The balance of said sections must be transferable so that it would be possible, at the date specified by both parties or at the most when closing the account, to effect a clearance between the various sections to extract a single balance.

ARTICLE 399

Payments, made by the customer, into the current account shall not bear interest unless otherwise agreed upon. Interest shall be computed on the basis of the rate agreed upon; where the rate has not been fixed in the agreement it shall be computed on such rate of interest as is current in the market at the time of dealing, provided that it does not exceed 12%.

Interest shall run on the debit balance as of the date of closure of the account, unless otherwise agreed upon.

ARTICLE 400

Where a time limit has been fixed for the closure of the account it shall be closed on the expiry of said time; it may be closed prematurely by agreement of both parties.

Where a time limit is not set for the current account it may be closed at any time upon request of either party with due consideration to the time limits prescribed for notices as agreed upon or as is customary.

In all cases, the account shall be closed on the death of either party, his becoming legally interdicted, his being declared bankrupt, or by the expiry of a juristic person; crossing off the bank from the list of banks operating in the State, or upon the bank ceasing its operations.

ARTICLE 401

The current account shall be deemed to be suspended at the end of the bank's financial year. Such suspension shall not be considered as a final closure of the account but shall remain open with its balance being carried forward to the same current account. The said account shall resume its operations on the next working day.

ARTICLE 402

Where the current account is closed, the debit balance is deemed to have immediately matured, unless both parties agree otherwise, or where some of the transactions bound to be entered into the account and tending to change the sum of the balance are still in the course of being entered, in which case the debit balance shall be deemed matured as of the working day following the last entry required for such transactions.

ARTICLE 403

The general rule of prescription by time limitations shall apply to the debit balance and its interests.

ARTICLE 404

Where the sum of a debt entered into the account disappears or is reduced due to a cause subsequent to its entry into the account, such entry must be cancelled or reduced (as the case may be) and the account amended accordingly.

ARTICLE 405

The creditor of either party to the account may levy seizure of the credit balance of his debtor with third parties as of the time of effecting the seizure.

ARTICLE 406

Where either party to the current account goes bankrupt, the mortgage made on his properties after the date fixed by the court for the suspension of payment may be adduced in evidence against the parties in order to guarantee the eventual balance debt to the extent of the debit balance amount at the time when the mortgage is decided.

Nevertheless, the mortgage may be adduced in evidence against the group of creditors, as to the difference, if any, between the debit balance amount at the time when the mortgage is decided and the balance amount at the time of closing the account, where it is established that the mortgagor was aware, when the mortgage was decided, that the debtor had stopped payment.

ARTICLE 407

Where the result of the discount of a negotiable instrument is entered in the current account but the value thereof is not paid on the date of maturity, the person discounting the bill may cancel the entry of its value into the current account by a counter entry even though the person who presented it for discount has been declared bankrupt.

A counter entry means an entry of a sum equal to the sum of the negotiable instrument in addition to the expenses in the debit side of the current account.

No counter entry may be made except in regard of such negotiable instruments as have not been paid in their maturity dates, any agreement to the contrary shall be null and void.

ARTICLE 408

In case of denial and lack of legitimate excuse, legal action for rectification of the current account shall not be heard in regard of entries one year after the date of receipt of the statement of account, even if such legal action is based on an error, omission or repetition of such entries; save where during such period one party has notified the other that he clings to his right to rectification of the account, or where the customer proves, regarding a current account opened with a bank, that throughout the period he did not receive from the bank any statement of account; in such both cases the action shall prescribe after the lapse of five years from the date of closure of the account.

PART THREE BANK CREDITS

CHAPTER ONE BANK LOAN

ARTICLE 408

A bank loan is a contract pursuant to which a bank delivers to the borrower an amount of money as a loan or enters such sum in the credit side to his account with the bank according to the conditions and time limits agreed.

The loan may be guaranteed with securities.

The borrower shall be bound to repay the loan and its interest to the bank within such time limits and according to such conditions as are agreed.

ARTICLE 410

A bank loan is considered a commercial activity irrespective of the capacity of the borrower or the purpose for which the loan is allocated.

CHAPTER TWO BANK GUARANTEE

ARTICLE 411

A ban guarantee is an undertaking issued by a bank to settle the customer's debt to a third party in accordance with the conditions agreed and included in the guarantee which may be for a definite or indefinite term.

A bank guarantee is a joint liability.

ARTICLE 412

A bank guarantee may be issued under different forms, among which:

Where the bank signs on a negotiable instrument as a reserve guarantor or gives such reserve guarantee by a separate paper which allows that several negotiable instruments are guaranteed together at one time.

An independent contract of guarantee is entered into.

A letter of guarantee is addressed by the bank to the customer's creditor pursuant to which the bank guarantees its customer's fulfillment of his obligations.

ARTICLE 413

A bank guarantee is considered a commercial activity regardless of capacity of the guaranteed (the person to whom the guarantee is issued) or the purpose for which it is issued.

ARTICLE 414

A letter of guarantee is an undertaking issued by a bank (the guarantor) at the request of one of its customers (the applicant) to pay unconditionally and without restrictions, a certain specified or specifiable sum to another person (the beneficiary), unless the letter of guarantee is made dependent on a condition where payment is requested within the time limit set in the letter; the letter of guarantee shall state the purpose for which it has been issued.

ARTICLE 415

The bank may require the production of a security in consideration of issuing the letter of guarantee.

The security may be in cash, negotiable or in the form of financial instruments, goods or an assignment to the bank by the applicant of his right vis-à-vis the beneficiary.

ARTICLE 416

Save with the approval of the bank, the beneficiary may not assign his right, which has arisen from the letter of guarantee to a third party.

ARTICLE 417

The bank may not refuse payment to the beneficiary on grounds concerning his relation with the applicant or the relation of the latter with the beneficiary.

In exceptional cases, the Court may on the request of the applicant levy seizure on the guarantee amount with the bank, provided that the applicant relies for his claim on serious and sure grounds.

ARTICLE 418

The bank shall be discharged from its liability vis-à-vis the beneficiary if within the validity period of the letter of guarantee no request for payment is received from the beneficiary, unless it has expressly agreed to renew the term prior to its expiry.

ARTICLE 419

Where the bank pays to the beneficiary the sum agreed in the letter of guarantee, it shall subrogate him for recourse against the applicant for the amount it had paid.

CHAPTER THREE OPENING OF CREDIT

ARTICLE 420

The opening of a credit is a contract pursuant to which the bank poses at the disposal of a customer a certain specified sum of money, which the customer would have a right to draw at one time or at several times.

A credit is opened either on a definite or indefinite term.

ARTICLE 421

A contract of opening credit is not considered a loan and the customer is not bound to use the credit opened in his favor.

ARTICLE 422

Where the credit is opened for an indefinite term, the bank may at any time cancel it, provided notice of cancellation is sent to the beneficiary at least thirty days before the date set for the cancellation. Any agreement which vests the bank with a right to cancel an indefinite term credit without need for a notice or at a shorter notice than that specified above shall be null and void.

In all cases, a credit opened for an indefinite term shall be deemed cancelled, if the beneficiary does not use it. After the lapse of six months from the date on which the beneficiary was notified of the opening, save where it is otherwise agreed upon.

ARTICLE 423

The bank may not cancel the credit before the end of the term specified in it, except where the beneficiary dies, becomes legally incompetent, suspends payment – even though a judgment declaring his bankruptcy is not issued – or commits a gross negligence in using the credit opened in his favor.

Where the customer in whose favor the credit is opened is a company, such credit shall expire also upon its cancellation or upon expiration of its term.

ARTICLE 424

Where a substantial decrease occurs to the real or personal securities presented by the customer, the bank has the right to require an additional security or reduce the credit amount in proportion to such decrease.

ARTICLE 425

A credit may not be assigned save with the approval of the bank which opened it.

ARTICLE 426

A contract of opening a credit is considered a commercial activity, regardless of the capacity of the customer or the purpose for which the credit is intended.

ARTICLE 427

The contract of opening a credit shall specify the maximum amount of the credit as well as the method of using the same.

CHAPTER FOUR DOCUMENTARY CREDIT

ARTICLE 428

A documentary credit is a contract pursuant to which a bank opens a credit at the request of its customer (the applicant) within the limits of a specified amount and for a definite term in favor of another person (the beneficiary) against a security of documents representing goods transported or intended for carriage.

A documentary credit contract is deemed to be independent of the contract which caused the opening of credit, and the bank shall remain a stranger to such contract.

ARTICLE 429

Every documentary credit shall contain a time limit date for its validity and for presenting the documents for payment, acceptance or discount.

Where the date set for the validity of the credit on a bank holiday, its validity shall be extended to the next following working day; the validity of the credit shall not extend beyond other than holidays even when the expiry of the validity coincides with the date of disruption of the banks business due to force majeure circumstances, unless there is an express authorization to that effect from the applicant.

ARTICLE 430

The documents regarding the opening the documentary credit or its confirmation or notice thereof shall describe precisely the paper against which the operation of payment, acceptance or discount is executed.

A bank which opens a letter of credit must execute the conditions of payment, acceptance or discount as agreed in the credit contract, if the documents representing the goods conform to the particulars and conditions provided for in the contract.

ARTICLE 431

A documentary credit may be revocable or irrevocable.

A documentary credit shall be irrevocable, unless expressly agreed to the contrary.

A documentary credit may be either divisible or transferable or indivisible or not subject to transfer.

ARTICLE 432

A Revocable documentary credit shall not create any obligation to the bank towards the beneficiary, the bank may at any time repeal or cancel it of its own accord or at the request of the applicant.

Where the bills of lading presented are in conformity with the particulars and conditions contained in the documentary credit contract, within its validity term and prior to its cancellation, the bank and the applicant shall be jointly and severally liable towards the beneficiary.

ARTICLE 433

Where the documentary credit is irrevocable the obligation of the bank shall be absolute and direct towards the beneficiary and to any bona fide holder of the document drawn in execution of the contract which caused the documentary credit to be opened.

An irrevocable documentary credit may neither be cancelled nor amended, save with the agreement of the concerned parties.

ARTICLE 434

An irrevocable documentary credit may be confirmed by a bank other than the opening bank; such a confirming bank shall in turn assume an absolute and direct obligation towards the beneficiary and any bona fide holder of the document drawn in execution of the documentary credit contract.

A mere notice of the opening of the documentary credit sent to the beneficiary through a bank other than the opening bank shall not be deemed confirmation of the credit by such other bank

ARTICLE 435

The documents shall be presented to the bank before the expiry of the validity of the credit, otherwise the bank may reject them, unless the applicant requests that they be accepted, and the bank consents to such a request.

The bank must ascertain that the documents required are available, that their contents are in full conformity with the conditions of the letter of credit and that they fully conform with each other.

ARTICLE 436

The Bank shall only be liable to ascertain that the documents are as they appear, in conformity with the documents required in the letter of credit and it shall not be bound to check if the goods conform to the documents which represent them.

ARTICLE 437

Where the bank accepts the documents, it shall immediately send them to the applicant, and where the bank rejects the same, it shall forthwith send notice of its rejection to the beneficiary, indicating the reasons of such rejection.

ARTICLE 438

The beneficiary may not assign the goods in whole or in part to another person or persons, save with an express authorization to that effect from the bank and provided it is expressly stipulated in the letter of credit.

The bank may not assign the performance of the credit except with the authorization of the applicant.

The assignment may only be made once, unless the contract of opening the credit stipulates otherwise.

Assignment shall be made by endorsing the letter of credit if it is to order or by receiving it if it is to bearer, but in case it is nominative, the procedures of remittance shall apply.

ARTICLE 439

The applicant shall be bound to repay to the bank the amount it has paid to the beneficiary within the limits of the credit opened as well as to pay to the bank the expenses disbursed in this respect.

As a guarantee of its entitlements, the bank shall have the right to withhold the documents it receives from the seller and a right of mortgage on the goods represented in their documents.

Where the applicant fails to pay to the bank the value of the bills of lading conforming with the conditions of the credit within one month from the date of being notified of arrival of said bills, the bank may sell the goods using the methods of execution of articles which are subject to mortgage of commercial mortgage.

Where the goods perish or are damaged the mortgage right shall pass to the insurance amount.

Nevertheless, the bank and its customer may, after arrival of the documents of the credit financed by said bank, agree that the customer debtor assigns the goods subject to the documentary credit or part thereof to the bank, in settlement of the bank's debt in whole or in part. The bank shall thereafter entrust the customer with the receipt of such goods, keep them in trust, and sell them on behalf of the bank, for the account, following the conditions and terms agreed to by both parties. The customer's responsibility shall in that case be that of a commission agent, and the bank shall have all the rights of the principal over such goods or their price.

PART FOUR OPERATIONS ON COMMERCIAL PAPERS

CHAPTER ONE DISCOUNT

ARTICLE 440

Discount is a contract pursuant to which a bank undertakes to pay in advance the value of a commcercial paper to the beneficiary in consideration of transferring the ownership of the paper to the bank.

The bank shall deduct from the sum paid to the beneficiary of the discount interest on the paper's amount plus a commission. It may be agreed to effect the discount against a fixed lumpsum.

ARTICLEE 441

Interest is calculated on the time which lapses from the date the commercial paper is presented for discount until its maturity date, unless otherwise agreed upon.

Commission shall be estimated on the basis of the value of the commercial paper.

ARTICLE 442

The bank shall acquire the ownership of the discounted commercial paper and it shall be vested with all the rights of the bearer and it may have recourse against the signatories of the paper.

The bank shall have vis-à-vis the beneficiary of the discount an independent right to recover the sum it has placed at his disposal,

without deducting such interest and commission which were received by the bank without compliance with the provisions related to the current account, the bank shall exercise such right within the limits of the unpaid papers, regardless of the cause of the non-payment of the discounted papers.

ARTICLE 443

Where the value of the paper is not paid or the customer goes bankrupt, the bank may reserve to itself the right to make a counter entry to the vale of the commercial paper and the expenses in the debit side of the customer's account who shall in his turn shall endorse the paper to the bank.

Where the customer has no account rith the bank, he shall be bound to repay to the bank the value of the commercial paper and the expenses.

CHAPTER TWO CREDIT BY ACCEPTANCE

ARTICLE 444

Credit by acceptance is a contract in which the bank plays the role of the drawee, it accepts in this capacity a commercial paper drawn on it by the customer or another party who deals with sch customer and the bank undertakes to pay the value on maturity.

ARTICLE 445

WHERE THE bank pays the value of the commercial paper it has accepted, it shall enter the value and the expenses in the debit side of the customer's account, and shall hve recourse against the customers for the sums paid by virtue of the credit opened in favor of the customer and used as a consideration for the payment of the commercial paper which it had undertaken to accept.

CHAPTER THREE COLLECTION OF COMMERCIAL PAPERS

ARTICLE 446

The bearer of a commercial paper may endorse it to the bank in terms of delegation of power following which the bank, by virtue of the endorsement shall become a proxy in the collection of the paper's value for the account of the endorser.

ARTICLE 447

Upon maturity of the commercial paper the bfank must claim payment from the drawer or the author, where payment is made, the bank shall enter the value of the paper in the credit side of the customer's account; and if payment is not made the bank shall make a protest or establish the non-payment and in both cases the expenses shall be charged to the customer's account.

ARTICLE 448

The bank shall be liable for fault or omission in the execution of its proxy.

The bank may stipulate its exenoration from liability for delay in drawing up the protest. Such stipulation shall produce its effects between the customer and the bank, unless an action of fraud or gross negligence is attributed to the bank. Such stipulation shall not have effect vis-à-vis the other endorsers.

ARTICLE 449

The proxy resulting from an endorsement made as a delegation of power shall not lapse upon the endorser's death or his becoming legally imcompetent.

PART FIVE OPERATIONS ON FINANCIAL SECURITIES

CHAPTER ONE LENDING AGAINST A GUARANTEECONSISTING OF FINANCIAL SECURITIES

ARTICLE 450

Lending against a guarantee consisting of financial securities is a loan secured by mortgage.

Where the financial securities are nominative instruments, mortgage of thereof shall be made in writing by virtue of an assignment stating that it is given as a guarantee, marked on the instrument itself and entered in the records of the issuing party. However, where the financial securities are bonds to bearer, they shall be treated as material movables and mortgage thereof may be made by all means of evidence.

ARTICLE 451

Possession of the mortgaged financial securities shall pass on to the creditor bank.

The bank shall have the right to withhold such securities.

ARTICLE 452

The bank must keep the mortgaged securities and collect their profits, receive their value upon depreciation and deducting such sums from the principal debt.

ARTICLE 453

Where the bank does not receive its dues on the maturity date, it may may apply to the competent Court for authorization to sell the mortgaged instruments by public auction or at their price in the stock exchange market to obtain payment of its dues from the sale price before any other creditor.

ARTICLE 454

Where the instruments are presented by a person other than the debtor, the owner thereof shall not be bound to pay the debt guaranteed by the mortgage, except in his capacity as guarantor in rem.

ARTICLE 455

A third party appointed by the two contracting parties to acquire the mortgaged instruments, shall be deemed to have waived any right to foreclose on the mortgage for any reason prior to such mortgage, unless he had reserved such right when he accepted to take possession of the mortgaged instrument for the account of the creditor.

ARTICLE 456

Where the full value of an instrument is not paid at the time it presented for mortgaging, the debtor shall upon maturity of the unpaid part, pay it two days at least prior to the maturity date, otherwise the mortgagee creditor may petition the Court to sell the instrument, in accordance with the provisions of article 453 hereof, then he shall settle the unpaid part from the proceeds of the sale and keep the balance as a guarantee instead of the mortgage.

ARTICLE 457

The lien of the mortgagee creditor shall remain valid in the same rank as between the contracting parties and vis-à-vis third parties, over the profits of the mortgaged instrument, its interest, the papers replacing it and the value if paid before its maturity date.

CHAPTER TWO DEPOSIT OF FINANCIAL SECURITIES

ARTICLE 458

The deposit of financial securities with a bank is a contract by which a customer delivers to the bank the financial securities which have been agreed to be deposited, and the bank gives the customer a receipt upon taking delivery of such securities. Such receipt shall contain the contract conditions and the number of the financial securities, but the said receipt shall neither represent the securities deposited nor replace them, it shall be deemed as mere instrument to prove the contract.

ARTICLE 459

In the custody of the financial securities deposited with it, the bank shall exercise such care as is exercised by a depository who receives remuneration and shall take to that effect all the precautionary measures, as is required in the banking customs, any agreement which exonerates the bank from such obligations shall be null and void.

The bank shall be liable for the perishing or theft of such financial securities, save where such perishing or theft has resulted from a force majeure.

ARTICLE 480

A bank may not use the financial securities deposited with it whether by disposing thereof, mortgaging the same or exercising the rights derived thereby except with a special authorization by the customer to do so.

ARTICLE 461

The bank shall undertake the management of the financial securities deposited with it, by collecting the profits and value due or redeemed securities and it shall notify the customer depositor of the operations relating to the said securities such as replacement or renewal thereof, and place the collected sums at the disposal of the depositor and credit them to his account.

The bank shall inform the depositor of every matter or right relevant to the financial security to which his instructions or his choice is necessary; where the depositor's instructions are not received in due time the bank shall dispose of the matter in such manner as is beneficial to the depositor who shall bear the costs.

The bank shall be held liable where it fails to fulfill its obligations and damage is caused to the customer as result of such failure.

ARTICLE 462

The bank shall be entitled to a remuneration against the obligations it assumes, and the remuneration shall, in case of absence of agreement, be determined according to the custom, with due consideration given to the number and value of the financial securities deposited.

As a guarantee of the bank's receipt of its due remuneration, it shall have the right to withhold the financial securities deposited and refrain to return them until recovery of its right, in addition to the priority right prescribed by the law for the expenses disbursed for the keeping of a movable property.

ARTICLE 463

The bank must return the financial securities deposited with it on demand of the depositor with due consideration to the time needed for preparation of the securities for such return.

The return shall be in the same place where the deposit was effected; the bank must return the same securities which had been deposited and not securities of the same kind with different numbers, unless both parties agreed thereon or the law permits the return of fungibles.

ARTICLE 464

The return of the financial securities must be to the depositor in person, his legal representative, his heirs or his personal proxy - as the case may be – even when the security contains something indicating that it is owed by a third party.

ARTICLE 465

Where the bank loses possession of the financial securities for a reason beyond its control, it shall have the right to file a claim for recovery of the same from the person having acquired them.

Where the financial securities made to the bearer are lost or stolen, the bank shall inform the party having issued such securities of the fact and instruct him from paying the profits or value of said securities to any person who may claim there-for in case of redemption or maturity.

ARTICLE 466

Where the action at law is brought on the maturity of the securities deposited with the bank, the bank shall send notice directly to the depositor accordingly and abstain from returning the securities to him until the action is decided by the judicial authorities.

PART 6 LEASE OF SAFE DEPOSIT BOXES

ARTICLE 467

Lease of safe deposit boxes is a contract pursuant to which the bank undertakes to pose a certain specified safe deposit box at the disposal of its customer, to be used for a certain specified period against a fixed remuneration.

The bank shall keep the leased safe deposit and insure its fitness for use by taking all such measures as are imposed by the banking customs.

ARTICLE 468

The safe deposit box should be opened with two keys, one of which should be handed in by the bank to the customer lessee and keep the other one. The bank may not give a duplicate of the key to any other person, neither the customer himself nor his authorized agent.

The key handed to the lessee shall remain the property of the bank and must be returned to it on termination of the lease term.

The bank may use other means such as automated control or the plastic cards systems.

ARTICLE 469

The bank shall be responsible for the safety, custody and fitness for use of the safe deposit box and may not deny responsibility except by proving a force majeure or the third party interference having the same effect as that of a force majeure.

The bank may not plead exoneration from liability where fraud or gross negligence is proved to have been committed by it or its subordinates.

ARTICLE 470

The lessee shall undertake to use the safe deposit box as is customary and to pay the rental agreed on the maturity dates.

The lessee of a safe deposit box may not place therein articles detrimental to its safety or the safety of the place where it lies.

Save where otherwise agreed upon with the bank, a lessee may not sublet the safe deposit box or part thereof nor may assign the lease to a third party.

ARTICLE 471

Save where otherwise agreed upon, when a safe deposit box is leased to several lessees, each one of them may use it separately.

Where one of the lessees dies, the bank may not, after becoming aware of the death, give permission for the opening of the safe deposit box, except with the approval of all the concerned persons or pursuant to a Court order.

ARTICLE 472

The bank shall keep a register where the dates and times on which the lessee opens the safe deposit box shall be entered.

ARTICLEE 473

Where the bank finds out that the safe deposit box is endangered or that it contains dangerous articles, it shall forthwith notify the lessee to report to the bank premises immediately and either empty the box contents or remove the dangerous articles there-from. Where the lessee fails to report on the date fixed, the bank may request the Court in whose jurisdiction the bank is located, permission for opening the box in order to empty it or to remove such dangerous items in the presence of any person assigned there-for by such Court. Minutes of such procedure shall be drawn, where the box contents shall be listed down. Where the danger threatening the safe deposit box is imminent, the bank may, at its responsibility, open the box and empty it or remove the dangerous articles without any notice or permission from the Court. This shall be performed by a committee consisted at least of three of the bank officers, minutes thereof shall be drawn and one copy of such minutes shall be sent to the customer.

ARTICLE 474

Where the lessee fails to pay the box rental on the due dates, the bank may, after the lapse of fifteen days, unless agreed to another period, from the date of a notice served on him requiring payment, consider the contract as automatically rescinded and recover the box, after sending notice to the lessee that he must report to the bank, open the box, and empty its contents and deliver its key. The notice shall be valid if sent to the last address specified by the lessee to the bank.

Where the lessee fails to report on the date set or if the contract term expires, the bank may, after serving the notice on him, apply to the Court in whose jurisdiction the bank is located, for permission to open the safe deposit box and vacate it in the presence of a person designated by the Court to that effect, who shall prepare a report of the fact, listing down the contents and signed by the Court delegate and the bank. The Court may order that the contents be deposited with the bank, or with a trustee appointed by the Court, until they are handed to their owner or until a Court order is issued to dispose thereof.

ARTICLE 475

The bank may withhold the contents of the safe deposit box and shall have priority right over the price resulting from the sale of its contents for collection of the rent and the accruing expenses.

ARTICLE 476

A precautionary or executioner attachment may be levied on the contents of the safe deposit box.

The attachment shall be remanded by notifying the bank with the contents of the deed by virtue of which such attachment is levied, and by requiring the bank to state whether it has leased a safe deposit box to the distrainee. Upon receiving such notice, the bank shall forthwith bar the distrainee from using the box and notify him without delay that attachment has been levied on the safe deposit box.

Where the attachment is precautionary, the lessee may request the Court to lift the seizure from all or part of its contents.

Where the attachment is precautionary, the bank shall be bound to open the safe deposit box, empty its contents in the presence of the distrainer and the execution officer and notify the lessee of the date determined for the opening of the safe. On the date fixed, an inventory of the box contents shall be made, and such contents shall be delivered to the bank or the trustee appointed by the Court, until they are sold in accordance with the procedures set by the Court.

Where the safe deposit box contains papers or documents not included in the compulsory sale, they must be delivered to the lessee. However, if the lessee is not present at the time of opening the box, such papers or documents shall be delivered to the bank for safekeeping after placing them in an envelope sealed with the stamps of both the execution officer and the bank delegate, until they are claimed by the lessee.

The distrainer must pay the bank a sum sufficient to secure the rent of the safe deposit box for the duration of the period of attachment.

ARTICLE 477

Save the cases provided for in the law, the bank may not open a leased safe deposit box or empty its contents except with the permission of the lessee and in his presence, or in execution of a Court order or decision.

END OF THE UNITED ARAB EMIRAYES BANKING LAW

TABLE OF CONTENTS